

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,371

FRANCIS J. DUGAN,

vs.

FRED KORTH, ET AL.

JOINT APPENDIX

744

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 20 1964

Nathan J. Paulson
CLERK



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Filed, November 1, 1962. Harry M. Hull, Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF COLUMBIA

Civil Action 3293-62

FRANCIS J. DUGAN, 347 Dutton Road, Sudbury, Massachu-
setts, *Plaintiff*,

vs.

- (1) FRED KORTH, Secretary of the Navy, Navy Department,
Washington, D. C.,
- (2) FREDERICK LAWTON,
- (3) ROBERT E. HAMPTON,
- (4) JOHN W. MACY, JR., Commissioners, United States,
Civil Service Commission, F. at Eighth Street, N.W.,
Washington, D. C.

AMENDED COMPLAINT TO REQUIRE DEFENDANTS TO ACCORD
PLAINTIFF ALL RIGHTS, BENEFITS AND PRIVILEGES REQUIRED
BY THE VETERANS ACT

1. Plaintiff is a citizen of the United States, a resident of the State of Massachusetts, and an ex-serviceman who served on active duty in the Armed Forces of the United States and was separated therefrom under honorable conditions and is a permanent preference eligible who has completed a probationary period employed in the U.S. Civil Service under the Department of the Navy and as such is entitled to the benefits conferred by Section 14 of the Veterans' Preference Act of 1944 (5 U.S.C.A. 863).

2. Defendant (1) Fred Korth is sued in his official capacity as Secretary of the Navy, and defendants (2), (3), and (4), Frederick Lawton, Robert E. Hampton, and John W. Macy, Jr. are sued in their respective official capacities of Commissioners of the United States Civil Service Commission.

3. This suit is for a mandatory order to require defendants to accord plaintiff all the rights, benefits and privileges required by the Veterans' Preference Act; to require the defendant (1), the Secretary of the Navy, to set aside the order of the Navy Department reducing him in rank by placing him under the immediate supervision of a "Group Master", who reports to the Production Officer while plaintiff as Master Shipfitter, prior to his reduction in rank reported directly to the Production Officer; and to vacate and set aside the decision of the Board of Appeals and Review of the U. S. Civil Service Commission rendered October 27, 1961, erroneously holding that plaintiff's appeal from an order of the Commander, Boston Naval Ship Yard, was not within the purview of Section 14 of the Veterans' Preference Act of 1944, (5 U.S.C.A. 863) and that the Civil Service Commission does not have jurisdiction to adjudicate plaintiff's appeal from the adverse action resulting from the order of the Commander, Boston Naval Ship Yard which reduced plaintiff in rank in his permanent U. S. Civil Service position, contrary to the applicable provisions of the Veterans' Preference Act which provides:

§ 863. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the Civil Service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be . . . reduced in rank . . . except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose . . . reduction in rank . . . is sought shall have at least thirty days' advance written notice . . . stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: Provided,

That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: * * *

4. Prior to the time hereinafter stated, plaintiff held the position in the classified civil service in the Boston Naval Ship Yard as Master Shipfitter and the Senior Civilian Supervisor in full, complete, and final charge, and with authority to determine policy, of the group of the shops 11/26 then known as the Structural Shop 11/26. These duties included the following:

- (a) The administrative management decision making control of all shops in the group by direct supervision of the Shop Head and the supervision and direction of the staff supervisors and personnel of the Shop Planning, Personnel and Administration Sections for the Group.
- (b) The establishment and implementation of Shipyard and Production regulations, policies, objectives and programs within the group and the determination of and implementation of group objectives, programs, and policies.
- (c) The management and control of all elements of productive work, to insure that each Shop Head is provided with adequate manpower, materials and equipment for the timely and efficient completion of all work assigned to the group.
- (d) The administration of overhead expenses for all shops in the group.
- (e) The coordination control and custody assignment of the facilities and tools of the group.

5. Prior to February 1, 1961, plaintiff who was entitled to the benefits of the Veterans' Preference Act, quoted above, and one Simon who was not an ex-serviceman or entitled to the benefits of the Veterans' Preference Act were employed in the Boston Naval Ship Yard in equal rank. Effective February 1, 1961, a new reporting level of supervision was introduced and established administratively in the organization where plaintiff and said Simon were working. This additional reporting level was established between the position of Master Shipfitter which plaintiff held and that of Production Officer. Previously, plaintiff reported directly to the Production Officer, but effective February 1, 1961, plaintiff was required to report to one Simon, an employee who was not entitled to military preference, who was designated the "Group Master", who was given supervision over plaintiff and the employees and all operations under his immediate supervision, who was by lateral misassignment as Group Master, when Shop 17 was grouped with Shops 11/26, retained in Organizational Level 3 and retained his responsibility to report directly to the position of Production Officer in Organizational Level 2. This change in organization with the resultant reduction in the organizational and reporting levels of plaintiff's position, when Shop 17 was grouped with Shops 11/26, amounted to a reduction in rank of the plaintiff.

6. When Defendant No. 1 assigned the functions of plaintiff to the non-veteran Simon, Group Master who was given supervision by Defendant No. 1 over all the functions of plaintiff as Master Shipfitter and over all employees under plaintiff's supervision, all functions of the Master Shipfitter were transferred by Defendant No. 1 to the non-veteran Simon, Group Master.

When all of the functions of the Master Shipfitter (plaintiff) were transferred to the Group Master (Simon) by Defendant No. 1, as aforesaid he failed and neglected to comply with the third proviso of Section 12 of the Veterans' Preference Act of 1944 (5 USC par. 861) which provides:

"AND PROVIDED FURTHER, That when any or all of the functions of any agency are transferred to, or when

any agency is replaced by some other agency, or agencies, all preference employees in the function or functions transferred or in the agency, which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions. June 27, 1944, c. 287, § 12, 58 Stat. 390, amended 1949 Reorg. Plan No. 5, eff. Aug. 19, 1949, 14 F. R. 5227, 63 Stat. 1067."

The failure of Defendant No. 1 to follow the provisions of the above quoted law, was arbitrary and contrary to law.

7. This reduction in rank of plaintiff and the transfer of functions of the agency is further shown by the concurrent transfer of the grade determinant and functions from the plaintiff's position to the position of Group Master contrary to the provisions of Paragraphs 861 and 863 of title 5 USCA. This action of Defendant No. 1 in reducing plaintiff in rank and in transferring certain of the agencies functions then being performed by the plaintiff to the Group Master was reviewed by defendants numbered (2), (3), and (4), upon appeal by plaintiff, said defendants misinterpreted said action and contrary to law construed it in such a way as to deprive plaintiff of his right to appeal to the U.S. Civil Service Commission from the adverse action which (a) reduced plaintiff in rank in the classified civil service, and (b) transferred functions from plaintiff to the Group Master without complying with the provisions of Section 12 of the Veterans' Preference Act as quoted in paragraph No. six (6).

8. Through the illegal action of defendants numbered (2), (3), and (4), plaintiff has been denied the rights conferred by Section 14 of the Veterans' Preference Act (5 U.S.C.A. 863) and (5 U.S.C. Par. 861) to appeal to the Civil Service Commission from the adverse decision of the administrative officer whose action resulted in a reduction in plaintiff's rank in the classified civil service

WHEREFORE, The premises considered, plaintiff prays for an order of this Court requiring defendant (1) to set aside

the illegal action of reducing plaintiff in rank as aforesaid, and for an order restoring to plaintiff the duties and rank which he held prior to February 1, 1961, said restoration to be retroactive to February 1, 1961, to-wit, the position of Master Shipfitter, with all rights and powers which plaintiff had; and to require defendants numbered (2), (3), and (4) to take jurisdiction of plaintiff's appeal from the decision of the Board of Appeals and Review of the Civil Service Commission and to reverse the same and to hold that plaintiff is entitled to the benefits of the Veterans' Preference Act; and that said benefits require that plaintiff be re-assigned to the position of Group Master retroactive to February 1, 1961; and for such other and further relief as to the Court may seem just and proper.

WARREN E. MILLER,
810 18th Street, N.W.,
Washington 6, D. C.,
Attorney for Plaintiff.

Filed February 28, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

v.

FRED KORTH, ET AL., *Defendants*.

ANSWER TO COMPLAINT

First Defense

The complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

Answering specifically the numbered paragraphs of the complaint defendants aver as follows:

1. 2. They admit the allegations of paragraphs 1 and 2.
3. They are not required to answer the conclusions of law of paragraph 3, but insofar as answer may be required they deny that their decisions with respect to plaintiff have been erroneous or unlawful; and they deny that plaintiff has suffered a reduction in rank.
4. They admit that plaintiff was Master, Shops 11/26 and deny the remaining allegations of paragraph 4.
5. They deny the allegations of paragraph 5, except that they admit those allegations which have already been admitted by this answer and they admit that a new level of supervision, the Group Master, was injected between plaintiff and the Production Officer.
6. 7. 8. They deny the allegations of paragraphs 6, 7, and 8.

They deny all allegations not otherwise specifically answered herein.

Third Defense

Defendants contend that plaintiff has suffered no reduction in rank and no violation of his rights by the actions of which he complains herein.

/s/ DAVID C. ACHESON,
United States Attorney.

/s/ CHARLES T. DUNCAN,
Principal Assistant United States Attorney.

/s/ JOSEPH M. HANNON,
Assistant United States Attorney.

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Answer to Complaint has been made upon plaintiff by mailing a copy thereof to his attorney, Warren E. Miller, Esquire, 810 18th Street, N.W., Washington 6, D. C., this 28th day of February, 1963.

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

Filed May 14, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff,*

v.

FRED KORTH, ET AL., *Defendants.*

MOTION FOR SUMMARY JUDGMENT

Defendants herein through their attorney, the United States Attorney for the District of Columbia, respectfully move the Court to grant summary judgment for them on the ground that the pleadings and the certified administrative record concerning plaintiff which is attached hereto and made a part hereof disclose that there is no genuine issue as to any material fact and that defendants are entitled to judgment as a matter of law.

/s/ DAVID C. ACHESON,
United States Attorney.

/s/ CHARLES T. DUNCAN,
Principal Assistant United States Attorney.

/s/ JOSEPH M. HANNON,
Assistant United States Attorney.

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing motion for summary judgment together with statement of facts and memorandum of points and authorities in support thereof and Government's exhibit, have been made upon plaintiff by mailing copies thereof to his attorney, Warren E. Miller, Esquire, 810 Eighteenth Street, N.W., Washington 6, D. C., this 14th day of May, 1963.

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

Filed September 6, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH et al., *Defendants*.

PLAINTIFF'S POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff's position is that a new level of supervision has not been inserted between him and his former supervisor, the Production Officer.

1. A new position and position title of Group Master were established and retained in the same organizational and reporting levels as the former Shop Master's position. The defendant staffed these positions by "administrative assignment." (P. Exhibit No. 1, page 1, paragraph 4, filed herewith with plaintiff's affidavit in opposition to Defendants' motion for summary judgment.) The Defendants have stated:

"The administrative assignment as Group Master will not constitute a promotion for the master so assigned." (Plaintiff's Ex. 1).

Thus the Group Master position was not established in a new higher level of supervision.

2. The Group Master position was retained in the previous organizational and reporting levels of the former Shop Master positions; and the formerly equal in rank in all aspects Shop Master positions have been declared by the defendant to be subordinate to the Group Master positions. (Government Exhibit No. 1, Item 28, page 105, paragraph 3).

3. It is then evident that, since the Group Master positions have been retained in their previous levels and the formerly equal in all respects Shop Master positions are now subordinate to Group Master positions, that the former Shop Master positions have been reduced in rank in that the organizational and reporting levels of the Shop Master positions have been reduced to the next lower level in the organizational and reporting levels. Thus I have been subjected to a functional and substantial lessening of "rank" in my new position of Head of Shop in relation to other formerly equal positions in the immediate area of the supervisory relationship.

4. Government Exhibit No. 1, Item 11, page 23, paragraph 1, filed herein with Defendants' papers, contains the Decision of the First Civil Service Region, dated 3 May 1961, and states:

"We issued decisions that particular position changes constituted reductions in rank where there was no loss of grade or salary involved. In such cases we found that there was a functional and substantial lessening of 'rank' of the position to which changed, with relation to other positions, in the immediate area in the supervisory relationship."

5. P. Exhibit No. 6, Plaintiff's affidavit filed herein in opposition to Defendants' Motion for Summary Judgment, page 3, paragraphs 2-3, letter dated 29 January 1962 from Chairman, Board of Appeals and Review, states:

"... that the facts that the two positions are classified in the same series and grade is evidence that the positions are of the same rank in the organization. It is evidently true that both positions are equal in grade, but that is all. In this case the evidence is clear and uncontroverted that Mr. Horan, organizationally, was reduced in rank. He formerly reported directly to the Comptroller and the Assistant Comptroller; whereas now, in his new position, he reports through the Head, Accounting and Disbursing Division, which is evidence that the position to which Mr. Horan was reassigned is one of lower rank than that he formerly held.

"In view of the foregoing the decision of the Regional Office is accordingly affirmed, and the recommendation that Mr. Horan be restored to his former position, retroactive to the effective date of his reassignment is renewed."

6. P. Exhibit 6 establishes that in the opinion of the United States Civil Service Commission, as stated in P. Exhibit 6, the lowering of the reporting level of a position is evidence that the position which has been reduced in reporting level has been reduced in rank. Thus, it will be seen that I have been reduced in rank.

7. Navy Civilian Personnel Instructions 352.4-4, in effect 1 February 1961, provides:

"NCPI 352—SEPARATIONS (NONDISCIPLINARY), FURLONGHS, AND CHANGES TO LOWER GRADE

"4.4. REASSIGNMENT INVOLVING REDUCTION IN RANK.

"a. General

"When the reassignment of a veteran preference employee is proposed, the activity must determine whether the reassignment will constitute a 'reduction in rank' within the purview of Section 14 of the Veterans' Preference Act of 1944. If so, it must be treated as an adverse action and the procedures in NCPI 352.5-6 must be followed.

"b. Guidelines for determining whether a reassignment constitutes a reduction in rank.

"Neither the Veterans' Preference Act nor the Civil Service Commission's regulations specify the circumstances in which a reassignment (which involves no reduction in compensation) is a reduction in rank. Commission decisions, however, indicate that the following comparisons, between these positions from and to which reassignment is proposed, are necessary:

"(1) Organizational level, particularly when supervisory positions are involved.

"(2) Levels of supervision to which the positions report.

"(3) Promotional opportunities."

8. It is evident that since Plaintiff's reassignment on 1 February 1961 to his current Head of Shop position, in which he now is subordinate to the Group Master position, that the organizational and reporting levels of his former position of Master Shipfitter have been reduced one grade, thus in accordance with the criteria of NCPI 352.4-4 noted above.

9. Plaintiff contends the reduction in the organizational and reporting levels of his former position of Master Shipfitter is a reduction in rank in violation of Section 14 of the Veterans' Preference Act.

10. The Veterans' Preference Act states in Section 14 that, "No permanent preference eligible . . . shall be . . . reduced in rank or compensation." The Act states in unequivocal words that a preference eligible shall not be reduced in rank. The Act does not state that by the use of informal or formal non-standard procedures or the creating of special circumstances that the provisions, intent, and purpose of the Act may be evaded or nullified by any agency. Thus, the plaintiff contends that any reduction in rank of a preference eligible, regardless of how such reduction is accomplished, is of necessity in violation of the provisions, intent, and purpose of the Act.

11. Plaintiff further contends that, therefore, any reduction in rank, regardless of how brought about or made to occur, is a reduction in rank accomplished within the purview of Section 14 of the Veterans' Preference Act.

12. NCPI 351.9-4(c) provides:

"NCPI 351—REDUCTIONS IN FORCE

"9.4. TRANSFER OF FUNCTIONS.

"c. *Identifying positions with transfer of functions*

"(1) Certain duties of one or more positions are to be transferred while the unit performing the func-

tions to be transferred will remain intact to perform remaining functions. If the majority of the duties of a position are to be transferred to another service or naval activity, the incumbent will be identified with the transfer of functions. However, if grade-controlling duties are involved, the employee's rights will be based on the location of the higher grade duties rather than the majority of duties."

13. NCPI 351.9-4(d) provides:

"NCPI 351.9-4. TRANSFER OF FUNCTIONS.

"d. Effecting Actions.

"(1) Offer to follow the functions must be extended to all Retention Group I, II, and III employees in positions identified with transferred functions."

14. Plaintiff contends that concurrent with the reduction of the organizational and reporting levels on 1 February 1961 of his former position of Master Shipfitter, he also had transferred to the Group Master, by "administrative assignment" his former grade determinant and other functions of his former position of Master Shipfitter with the concurrent complete loss of the organizational divisions of Production Planning and Control; Administrative, Clerical, and Personnel Division, as the supervision of these organizational divisions was transferred to the Group Master on 1 February 1961.

15. Thus, the transfer of the foregoing functions and complete organizational divisions from his former position of Master Shipfitter to the Group Master position further contributed to his reduction in rank under Section 14 of the Veterans Preference Act in the provisions of the Naval Civilian Personnel Instruction 351.9-4(c) and 351.9-4(d)(1), quoted above; Section 12 of the Veterans Preference Act were not complied with, in that Plaintiff did not receive an offer to follow the functions.

16. NCPI 290, Personnel Action Forms and Reports, provides:

"2-3. DELEGATIONS OF AUTHORITY

"b. Field Service in general

"(1) The authority to effect personnel actions for employees in the field service, except as provided in c and d below has been delegated to:

1. Commandants, Commanders, and other commanding officers."

17. Plaintiff contends that by virtue of the authority vested in the Shipyard Commander by NCPI 290.2-3 b(1), quoted above, and by virtue of the authority and responsibility derived from the Power of Command, that the official letter to him as a signed written order from the Shipyard Commander to place in effect his assignment to a Head of Shop position, was an adverse personnel action that caused his reduction in rank. Plaintiff contends that the authority vested in the Shipyard Commander has the result, at least within the activity, that the issuance of an official non-standard personnel action (as a signed letter issued by the Shipyard Commander, G. Exhibit 1, Item 2, page 2) is as completely effective in accomplishing the position changes desired by the activity, and thus effecting an immediate reassignment of a position, as the issuance of a Standard Personnel Action Form 50 or 52, in effecting such changes. However, the issuance of and use of Standard Personnel Actions forms would restrict the activities and opportunities to arbitrarily select individuals to be reassigned, as the individuals would then have a Personnel Action Form to use in exercising their rights under the Retention Preference Regulations and the Veterans' Preference Act.

18. NCPI 351.2-5q provides:

"REDUCTION IN FORCE

"2-5. DEFINITIONS

"q. *Reassignment.*

"Any position change of an employee from one position to another within the Naval Establishment whether the movement is upward (promotion), downward (change to lower grade), or lateral (movement without promotion or change to lower grade)."

Plaintiff contends that within the criteria of NCPI 351.2-5q, quoted above, by written order of the Shipyard Commander he was reassigned from the position of Master Shipfitter to a Head of Shop position on 1 February 1961, and that the action should have been effected in accordance with Reduction-in-Force procedure as required by NCPI 351.2-3(a), quoted below:

"NCPI 351—REDUCTION IN FORCE

"2-3. USE OF REDUCTION-IN-FORCE PROCEDURE

Following is an explanation of what does and does not constitute a reduction-in-force action.

"a. When one or more employees are to be released from a competitive level, by separation, furlough for more than 30 days, or reassignment involving displacement, or change to lower grade, because of lack of work, shortage of funds, reorganization, or to make positions available to persons exercising restoration or reemployment rights, all resultant actions are reduction-in-force actions and must be effected in accordance with this instruction.

"b. The criteria in NCPI 352 will be used to determine whether the change to lower grade of an employee is a reduction-in-force action."

20. Plaintiff contends that the defendant did not comply with the provisions of NCPI 351.2-3(a)(b), quoted above.

NCPI 351.2-3(a) requires that when employees are released from a competitive level by reassignment or change to lower grade as a result of reorganization, all resultant actions are reduction-in-force actions and must be effected in accordance with this instruction. Plaintiff's reassignment to a lower grade (or rank) was an adverse action not in accord with R.I.F. procedures. Requirements of NCPI 351.2-3(b) were not met or complied with in implementing this reorganization, in that his reassignment to a lower grade (or rank) was an adverse action taken directly contrary to NCPI 351 requirements.

21. NCPI 351.2-5(e) provides:

"NCPI 351—REDUCTIONS IN FORCE

"2-5. DEFINITIONS.

"e. Competitive level.

"The grouping of positions for initial reduction-in-force competition to determine which employees will be separated from, and which will be retained in, their positions. All positions, within a competitive area, of such similarity that interchange of personnel is feasible are placed in the same competitive level. See NCPI 351.4-2."

22. NCPI 351.4-2(b) provides:

"NCPI 351—REDUCTIONS IN FORCE

"4-2. COMPETITIVE LEVELS.

"b. Determining interchangeability between positions.

"By interchangeability is meant such similarity between official duties of the positions that incumbents can be changed from one to the other without an unreasonable period of training or adjustment. Positions are interchangeable if it is found that the same knowledge, technique and know-how are required in performing the official duties, taking into consideration laws, orders, rules, regulations, policies, procedures, or skills that must be applied."

23. Plaintiff's former position of Master Shipfitter was in the same competitive level as the former position of Master Sheetmetal Worker. This is established by the facts that all Shop Master ratings were equal in compensation, rank, or grade and were regarded as equal positions in all aspects, as Navy Department policy. Plaintiff was qualified to be reassigned to the Group Master position on 1 February 1961, and he is now qualified. The plaintiff was informed by the Production Officer prior to 1 February 1961 that he was qualified for the position, and it is now an official part of his duties in his present position, to assume the duties of the Group Master position when the Group Master is absent. The defendant has not denied that the plaintiff was on 1 February 1961 and is now qualified to be the Group Master. It is thus evident that there is such similarity between his former position of Master Shipfitter and the present Group Master position that plaintiff could be changed to that position without an unreasonable period of training or adjustment. It is evident that in his former position of Master Shipfitter, he exercised similar knowledge, technique, know-how, and skills to the same factors now in the Group Master position. This is further substantiated by the fact that the Master Shipfitter position had complete civilian responsibility for approximately 75 per cent of the total employees, physical plant, trade and supervisory ratings, productive work, technical and administrative supervision, policy, and decision making duties and responsibilities, now in the Structural Group under the complete civilian responsibility of the Group Master. The former complete grouping of Shops 11/26 then known as the Structural Shop contained these percentages of those factors.

24. This is further substantiated by the fact that in three other naval shipyards the former complete shop grouping of Shops 11/26 were also known as the Structural Shop and were comparable in size to his former Shops 11/26. In these three other shipyards the former Structural Shop was renamed the Structural Group, and there were no additional Shops added to form the new group. Nevertheless, the Master Shipfitter in these three shipyards was "adminis-

tratively assigned" to the position of Group Master, as a lateral reassignment. P. Exhibit 11, page 1, establishes that a combination of Shops 11/26 is considered a complete shop group and thus further substantiates that plaintiff's former position of Master Shipfitter and the Group Master position are interchangeable within the criteria of NCPI 351.4-2(b) as quoted above.

25. As plaintiff's former position of Master Shipfitter is interchangeable with the Group Master position, the position of Master Shipfitter and Master Sheetmetal Worker were in the same competitive level on 1 February 1961 when the Master Sheetmetal Worker was "administratively assigned" to the Group Master position. Therefore, the positions of Master Shipfitter and Master Sheetmetal Worker, in accordance with the criteria of NCPI 351.2-5(e) as quoted above,¹ should have been grouped by defendant for initial reduction-in-force competition to determine which employees will be separated from, and which will be retained in, their positions. Plaintiff contends that, had this been accomplished, as it was required to be under the law, it would have been mandatory that the defendant appoint plaintiff to the Group Master position on 1 February 1961.

26. The criteria defined in the following Naval Civilian Personnel Instructions would have applied and required the mandatory appointment of plaintiff to Group Master on 1 February 1961 when the action was initiated.

"NCPI 351—REDUCTIONS IN FORCE

"2-2. GENERAL

"Management decides what positions are necessary when it is necessary to reduce personnel, and where and how large a reduction to make. The reduction-in-force instructions govern which employees will be affected by reduction in force after these basic determinations have been made by management. A summary of reduction-in-force procedures is as follows:

¹ See page 5 ¶ 21.

"a. Competitive areas are established according to primary subdivision of an agency. In the field service each naval activity usually constitutes a competitive area.

"b. Competitive levels, within which employees compete for retention, are established in each competitive area. Positions in a competitive level must be similar enough that interchange of personnel, without undue interruption to work, is feasible.

"c. Within each competitive level employees are placed in tenure groups based on their tenure of employment.

"d. Tenure groups are divided into subgroups separating employees entitled to veteran preference and other employees.

"f. When a reduction in force in any competitive level becomes necessary, employees are reached for action in the order of their subgroup standing and within their subgroup in the order of retention credits."

"4-3. RETENTION GROUPS, SUBGROUPS, AND CREDITS.

"a. General.

"Relative retention preference for reduction-in-force action is based on tenure, veteran preference, length of service, and performance ratings.

"(1) Initially employees are placed in the Retention Group I, II, or III based on the tenure of their appointment as described in paragraph b and c below. Within each competitive level all employees in Retention Group III are reached for action before any employee in Retention Group I or II and all employees in Retention Group II are reached for action before any employee in Retention Group I.

"(2) Within each retention group, employees are divided into two subgroups. Those who are entitled to veteran preference are in Subgroup "A" and all others are in subgroup "B". Within each retention group all employees in subgroup "b" are reached for action before any employee in subgroup "A".

"b. Retention groups—competitive service.

"(1) Group I

"This group consists of career employees who have completed probation.

"(c) Incumbents of positions brought into the competitive service who have acquired competitive status and have satisfied the service requirement for career tenure."

"(d) Subgroups.

"Employees entitled to veteran preference are in subgroup "A" of their retention group. Disabled veterans do not enjoy any superiority in reduction in force as a result of their disability. All other employees are in subgroup "B".

27. It is evident that in accordance with the criteria of NCPI 351.4.3-b(1) Group I and NCPI 351.4-3b (1) Group I(c) quoted above that Mr. Simon and Plaintiff were both in Group I. It has been shown that Mr. Dugan is a war veteran and Mr. Simon is not a war veteran; therefore, in accordance with the criteria of NCPI 351.4-3d, quoted above; Mr. Dugan is in sub-group "A" and Mr. Simon is in sub-group "B" of Retention Group I; therefore, Mr. Dugan is in Retention Group "I-A"; it is then evident that Mr. Simon is in a lower Retention Group than Mr. Dugan; therefore, it is evident that in accordance with the criteria of NCPI 351.4-3(a)2, quoted above, Mr. Dugan should have been reassigned to the Group Master position.

"NCPI 351—REDUCTIONS IN FORCE

"6-3. SELECTIONS FROM THE REGISTER

"(1) All employees in a lower subgroup must be selected for action before any employee in a higher subgroup is reached.

"(2) Within subgroups employees will be selected in the order of their relative retention preference except for employees with statutory retention rights.

"(3) No exception to the order of selection in (1) and (2) above may be made except under special circumstances as provided by NCPI 351.9-7."

"9-7. EXCEPTIONS TO REGULAR ORDER OF SELECTION.

"Exceptions to the selection and placement instructions of NCPI 351.6-3 and 351.8-3 are authorized only when it has been determined that there is no employee with superior rights who could be assigned to the position within 90 days without undue interruption to the work program.

28. Plaintiff contends that the criteria of NCPI 351.6-3(b) 1, 2, 3 and NCPI 351.9-7 were not complied with, the defendant did not have the authority to make an exception to the regular order of selection as he did in reassigning Mr. Simon to Group Master, as it has been previously established that plaintiff was an employee with superior rights who could be assigned to the position without undue interruption to the work program. This is confirmed by the fact that the defendants do not deny that plaintiff is qualified to perform the duties of the position. Therefore, the Reduction-in-Force procedure and the Retention Preference Regulations should have been applied and would have resulted in my being reassigned to the Group Master position 1 Feb. 1961.

"NCPI 9-3. RESTORATION AFTER IMPROPER SEPARATION OR REASSIGNMENT

"Employees who have been improperly separated or changed to lower grade are entitled to be restored to their former positions."

29. Plaintiff contends that he was improperly reassigned by adverse action to a position of lower rank, or grade, in violation of Reduction-in-Force proceedings; Retention Preference Regulations; and Section 12-14 of the Veteran's Preference Act, as previously established. Plaintiff further contends that the provisions of NCPI 351.9-3, quoted above, entitle him to be reassigned to his former position

of Master Shipfitter with the full duties and responsibilities of the position as it existed prior to 1 Feb. 1961. Plaintiff further contends that concurrent with his reassignment as Master Shipfitter with full duties thereof; the defendant must, in accordance with the provision of the Reduction-in-Force procedures and the Retention Preference Regulations, group the positions of plaintiff and Mr. Simon in the same competitive level to determine as stated in NCPI 351.2-5(e) which employee will be reassigned to the Group Master position. The Reduction-Force-Procedure and Retention Preference Regulations would then require that plaintiff be appointed to the Group Master position.

"NCPI 10-5. EFFECT OF DECISION

"a. By the Commission.

"When the Commission sustains an appeal the activity must promptly take corrective action in accordance with the Commission's recommendation. Such action may require:

"(6) Restoration to the rolls, without loss of tenure or status, if the employee was improperly separated. Restoration must be:

"(b) To the position to which he should have been assigned in lieu of separation or one of like seniority, status, and pay."

30. Plaintiff contends that in accordance with the criteria of NCPI 351.9-3, and NCPI 351.10-5a(6)b, quoted above, the defendant must reassign him retroactively to 1 Feb. 1961, to his former position of Master Shipfitter with full duties thereof so that he will not have lost tenure or status as a result of this reassignment in violation of the Retention Preference Regulations. To comply with the criteria of NCPI 351.10-5a(6)b the defendant must concurrently place the positions of Mr. Simon and Mr. Dugan in the same competitive level for application of Reduction-in-Force and Retention Preference Regulations and laterally reassign Mr. Dugan to the position of Group Master, to

which Mr. Dugan should have been assigned in accordance with Retention Preference Regulations on 1 Feb. 1961.

"NCPI 310—APPOINTMENTS AND OTHER ACCESSIONS

"2-2. POSITIONS MUST BE ESTABLISHED

"Before an accession may be made in the Federal service, there must be an established position for the employee to occupy."

31. The criteria of NCPI 310.2-2, as quoted above, was not complied with in that there was no established position for Group Master (P. Exhibit 11, page 1). This exhibit, BuShips Notice, 12531 of 17 Aug. 1961, from Chief Bureau of Ships, to Commander, All U. S. Naval Shipyard, Subject: Request for establishment of Group Master ratings, states:

"This notice requests addressees to submit appropriate rating requests for shop group Master Mechanic jobs."

32. This exhibit further states, "Reference (a) announced that the concept of shop grouping is now considered permanent and is incorporated into Standard U. S. Naval Shipyard Regulations. It is necessary, therefore, that current rating descriptions be prepared and appropriate rating titles established for Shop Group Master Mechanic Positions." Reference (a) is BuShips Note 5450 of 15 May 1961. Therefore, plaintiff contends that as of 1 Feb. 1961, the effective date of the "administrative reassignment" of Mr. Simon and Mr. Dugan, the defendant did not have the authority to staff the position of Group Master in that the position was not established until some date after 17 Aug. 1961, and the Shop Grouping reorganization was not considered permanent until 15 May 1961. Therefore, the plaintiff contends that not only was he reassigned by adverse action to a position of reduced levels, functions, responsibilities in violation of Reduction-in-Force Procedures, Retention Preference Regulations and Sections 12 and 14 of the Veterans' Preference Act, that resulted in the

Master Shipfitter position being reduced in rank, or grade, 1 Feb. 1961 but, it was accomplished by the "administrative reassignment" of Mr. Simon to a position that was not then in existence as it was not established until subsequent to 17 Aug. 1961.

"NCPI 352—SEPARATIONS (NONDISCIPLINARY), FURLONGHS, AND CHANGES TO LOWER GRADE

"4-2. CHANGE TO LOWER GRADE.

"c. Applicability of Retention Preference Regulations to change to lower grade.

"Reduction in force procedures (NCPI 351) will be used to select employees to be changed to lower grade when such changes are caused by:

- (1) lack of work
- (2) lack of funds
- (3) reorganization
- (4) exercise of regulatory reassignment or reemployment rights.

"As used in (3) above, 'reorganization' means the planned eliminations, additions, or redistribution of functions and duties within an organization. Thus, the reduction-in-force system will govern any adverse action brought about by deliberate management action to change official duties previously assigned, where the reasons are impersonal to the affected employee. This applies to unpublicized changes made by a supervisor affecting one or more positions under his control as well as to changes resulting from formal reorganization orders affecting complete organizations."

33. Plaintiff contends that the shipyard reorganization to shop grouping meets the criteria of NCPI 352 4-2(c), quoted above, in that it resulted in the planned elimination, addition, and redistribution of functions and duties within an organization, that this reorganization caused an adverse action to plaintiff's position of Master Shipfitter by loss of levels, functions and responsibilities, resulting in his Mas-

ter Shipfitter position being reduced in rank (or grade). Thus, the Retention Preference Regulations, in accordance with the criteria of the above NCPI would apply. The defendant did not comply with this criteria.

"NCPI 352—SEPARATIONS (NONDISCIPLINARY), FURLONGHS, AND CHANGES TO LOWER GRADE

"4-2. CHANGE TO LOWER GRADE.

"e. Reorganization vs. reclassification.

"In any case where it is difficult to determine whether there has actually been a reorganization, the Commission's definition of 'reorganization' (c above) shall be applied. 'Reclassification' is defined in NCPI 512-2-iii, i.e., a change in classification resulting from a change in standards or the correction of an initial classification error. This concept is equally applicable to ungraded positions. Other changes to lower grade resulting from classification action are effected under the retention preference regulations. However, when an employee has himself permitted his position to deteriorate to a point where downgrading becomes necessary, the cause of such downgrading can hardly be considered 'impersonal to the employee,' and the retention preference regulations are not for application—rather, the demotion will be processed as a deficiency in performance (paragraph d (1) above)."

34. If plaintiff had not appealed this adverse action that resulted in his reduction-in-rank, or grade, to protect his full rights under the Reduction-in-Force Procedures, the Retention Preference Regulations and Section 12 and 14 of the Veterans' Preference Act, Plaintiff contends that the defendant would have had the option of revoking his action in "permitting" the plaintiff to continue to hold the empty official title and pay of Master Shipfitter, regardless of the loss of levels, functions, etc. The defendant could then state, in accordance with the criteria of NCPI 352.4-2e:

"The employee has himself permitted his position to deteriorate to a point where downgrading becomes nec-

essary, the cause of such downgrading can hardly be considered 'impersonal to the employee' and the retention preference regulations are not for application—rather, the demotion will be processed as a deficiency in performance”

and the plaintiff would be effectively deprived of his legal rights. This NCPI 352 was revised and reworded subsequent to 1 Feb. 1961, and subsequent to plaintiff's referring to its provisions in his appeal action.

“NCPI 352—SEPARATIONS (NONDISCIPLINARY), FURLONGHS, AND CHANGES TO LOWER GRADE

“a. Applicability of procedural requirements.

“Change to lower grade, as discussed in this paragraph (4-2), is an adverse action. Accordingly, the procedural requirements of NCPI 352.5 are for application.

“c. Applicability of Retention Preference Regulations to change lower grade.

“Reduction in force procedures (NCPI 351) will be used to select employees to be changed to lower grade when such changes are caused by:

- (1) lack of work
- (2) lack of funds
- (3) reorganization
- (4) exercise of regulatory reassignment or reemployment rights.

“As used in (3) above, “reorganization” means the planned elimination, addition, or redistribution of functions and duties within an organization. Thus, the reduction-in-force system will govern any adverse action brought about by deliberate management action to change official duties previously assigned, where the reasons are impersonal to the affected employee. This applies to unpublicized changes made by a supervisor affecting one or more positions under his control as

well as to changes resulting from formal reorganization orders affecting complete organizations.

35. Plaintiff contends that in accordance with the criteria of NCPI 352.4-2c, Paragraph 2, last sentence, quoted above, the written order of the Commander (Government Exhibit 7, Item 2, page 2) that placed in effect the adverse action that resulted in plaintiff's reduction-in-rank, was an unpublicized change made by plaintiff's highest supervisor and affecting one or more positions under his control and that this letter constituted a nonstandard adverse personnel action form. Plaintiff further contends that this nonstandard adverse personnel action form which effected my reduction-in-rank was issued as a result of the Shipyard Commander's orders from the Chief of BuShips to implement the Shop Grouping Reorganization, and that the orders from the Chief of BuShips were formal reorganization orders affecting complete organizations; therefore, the Reduction-in-Force Procedures, Retention Preference Regulations, Sections 12 and 14 of the Veterans' Preference Act should have been applied in this section and resulted in my assignment to the Group Master position. This entire last sentence was also deleted from the NCPI subsequent to 1 February 1961 and subsequent to my notifying the defendant of its provisions.

36. Plaintiff contends that by being "administratively assigned" from the position of Master Shipfitter to his current position of "Head of Shops 11/26" that he has the rare distinction of possessing the only "Head of Shops 11/26" title in the entire Navy Department.

37. P. Exhibit 12, page 1, is an organization chart prepared and signed in August 1960 before the selection of Group Masters was announced in November 1960, and thus before the defendant was notified that plaintiff was considering filing an appeal action, and showing that the original plan was to have the Boston Naval Shipyard conform with the organizational plan of all other shipyards and have a separate and distinct position of Head of Shop 11, a separate position of Head of Shop 26, and each of these positions reporting directly to the Group Master, thus holding

true to the general pattern of other shipyards in conformance with the basic objectives of shop grouping.

38. The subsequent change in the organization chart (P. Exhibit 12, page 2) was issued in February 1960 and subsequent to the date plaintiff informed the defendant that plaintiff was dissatisfied with the selection of Group Master in that he felt his rights under the Veterans' Preference Act and applicable NCPI's had not been accorded him and that he was considering filing an appeal, shows his unique position and title of "Head of Shops 11/26."

39. Plaintiff contends that subsequent change in organization (P. Exhibit 12, page 2) that is peculiar to the Boston Naval Shipyard, of having the unique position of Head of Shops 11/26, and is at variance with the established pattern in the other naval shipyards and does not conform with the basic objectives of shop grouping, resulted from plaintiff's informing the defendant that his rights under the Veterans' Preference Act and NCPI's were being violated and that plaintiff was considering filing an appeal action. Plaintiff further contends that this subsequent change substantiates that the defendant recognized that my rights were being violated and took action to attempt to minimize the effect of any appeal action plaintiff initiated, in that the defendant deliberately kept Shop 26 under plaintiff a paper jurisdiction to insure that he would not be able to claim the complete loss of Shop 26 from his former position of Master Shipfitter.

40. Plaintiff further contends that this is further substantiated by the fact that in other naval shipyards the former position of Master Shipfitter is now assigned as "Head of Shop 11." Shop 26 has been completely removed from the jurisdiction of the Master Shipfitter and the Foreman Welder position has been assigned as the "Head of Shop 26": reporting direct to the Group Master, and the Foreman Welder formerly reported direct to the Master Shipfitter. The defendant may state that this Head of Shop 11/26 was created in the Boston Naval Shipyard because the facilities of Shop 11/26 are in the several areas within the shipyard and are complex in operations.

41. Plaintiff contends that this is not a valid reason as

in other naval shipyards the facilities of Shops 11/26 are equally dispersed and complex; and the Master Shipfitter is now only the Head of Shop 11. Plaintiff contends that the unique and original position of Head of Shops 11/26 could be eliminated in the Boston Naval Shipyard. The Boston Naval Shipyard would then be exactly organizationally comparable with the management positions and titles in the Structural Group, to all other naval shipyards that have a similar structural group; with the resultant current yearly savings in salary of \$14,289.60 per annum. This objective would have been accomplished on 1 Feb. 1961 had plaintiff been reassigned to the Group Master position in accordance with his legal rights. This objective can still be accomplished by the concurrent designation of the present Foreman Welder and Foreman Shipfitter to be Head of Shop 26 and Head of Shop 11, respectively, when the plaintiff is reassigned as Group Master in accordance with his legal rights under Naval NCPI's, Reduction-in-Force Procedures, Retention Preference Regulations and Sections 12 and 14 of the Veterans' Preference Act.

42. Prior to 1 Feb. 61, the plaintiff as Master Shipfitter with duties and responsibilities thereof, was the highest ranking civilian in complete charge of Shops 11/26, the largest and most diversified and complex group of shops under a single autonomous Master position in the Boston Naval Shipyard (P. Ex. 9, page 4, Paragraph 3).¹ Mr. Simon as Master Sheetmetalworker, was responsible for a relatively small or medium size shop with less than one-third ($\frac{1}{3}$) the employees in Shops 11/26, the Shop 17 operations were mainly of a routine manufacturing nature of ventilation, furniture and light non-structural divisional compartmentation bulkheads by the fabrication of light sheetmetal, plus a very small number of employees assigned to plating, buffing and polishing of small metal parts.¹ Nevertheless, when Shops 11/26 were merged into the Structural Group of Shops 11/17/26 on 1 Feb. 1961 the defendant arbitrarily "administratively reassigned" Mr. Simon who was formerly responsible for only the

¹ See Pltf. Ex. 10, pages 2 and 3.

smallest and least complex of the three shops that now form the Structural Group,¹ to the position of Group Master, the highest ranking civilian and senior civilian supervisor in charge of *all operations* of Shops 11/26 and Shop 17.

43. Plaintiff contends that this is analogous to the following:

A large food concern, Corporation X, with a number of stores of various sizes and importance, ranging from supermarkets to small variety type stores, as a management policy, has theorized that the managers of all of their stores, regardless of size or importance, are entitled to receive the same pay; that they occupy equivalent positions; that they perform equivalent duties and responsibilities; and that they will all report directly to the General Manager "A". The obscure reasoning that justifies this theory can only be explained by the higher management of Corporation X.

44. The management of Corporation X decides that they, on a national basis, will merge their stores into various size groups to consolidate general office spaces, office personnel and functions, and manager's offices into one area. In carrying out this store grouping reorganization, Corporation X decides that Manager "B", the manager of their largest supermarket, will be grouped with Manager "C" a manager of a store less than $\frac{1}{3}$ of the size of the supermarket managed by "B". Corporation X then decides that Manager "C" will now be titled Group Manager in complete charge with full authority over all operations of the supermarket and his former smaller store. It is decided that the Group Managers' office will be relocated to an office in the supermarket, along with all other office functions. It is decided that Manager "B" will be relocated to a smaller office in his former supermarket, and Manager "C", as Group Manager will move into a larger newly altered office, with a conference room, in the supermarket. Corporation "X" states to Manager "B" you are now subordinate to the

¹ See Pltf. Ex. 10, pages 2 and 3.

Group Manager, however we are going to *permit* you to retain your title and pay of Manager "B". We want you to understand that you have not been demoted, you will remain in charge of the supermarket, however, the Group Manager now will decide what you shall stock; he will decide on any changes of layout and facilities; he will now decide on any increase or reduction of employee and supervision, he will now select any new employees or supervision, he will now establish policy for discipline, safety, training, etc., etc.; of course, we understand that the responsibility for deciding on all of these was yours before the stores were grouped; however, these are only minor items and will not be ever missed. Therefore, your former position has not been affected by our grouping program. Corporation "X" further decided that Manager "D", the manager of one of their smaller stores in another sectional area, will not be grouped but will remain as before; however, the position of Manager "D" will have its title changed to Group Manager.

45. Manager "B", "C", "D", were all equal in all aspects before store grouping was implemented, now Manager "B" is directly subordinate to Manager "C" and organizationally subordinate to Manager "D" as Group Masters. Yet, Manager "D", as Group Master, is still only in charge of his original and only small store. Corporation X decides some two years later that they will devise a way to pay the Group Managers more money. Corporation X decides we cannot establish a new separate pay level for the Group Master as this may emphasize the differences in the responsibilities and have our subordinate managers claiming loss of compensation. We will disguise it as an additional pay differential for extra duties.

46. Manager "B" of the former supermarket is then receiving less compensation than his previous equals, former Manager "C", who has increased his responsibilities as a result of assuming Manager "B's" former functions, and former Manager "D", who is receiving the additional compensation for non-existent additional duties as a differential.

47. Public recognition of the changes that occurred in Corporation "X", on a national basis, to Manager "B's" position, then subject him to ridicule inside and outside of the organization, and ridicule inside and outside of his personal life. Manager "B's" loss of status and prestige, cause immeasurable damage to his technical reputation in his lifetime career, etc.; however, Corporation "X" continues to state to all interested parties: "What's all the fuss about—he's still Manager "B", isn't he?"

48. Plaintiff contends that the Group Master positions have been receiving additional compensation in the position of Group Master since 11 Nov. 1961. (P. Ex. 13, p. 1).

49. Plaintiff contends that the increased compensation for the Group Master position was implemented in an irregular manner.

BOSNAVSHIPYD INSTRUCTIONS 12531.3, Subject: Additional pay assignments, Paragraph 6, *Additional Pay Assignment Restrictions* states:

"c. An assignment to work of a higher-paid rating must be beyond the scope of the employee's regular rating and clearly within the scope, and representative of the full skill level, of the specified higher rating (such that, if these duties were to be performed on a continuing basis, a conversation of the employee concerned to the higher-paid rating would normally be required).

"d. Assignments to work of higher ratings may be made only for relief of short-term (normally not more than 30 days) workload difficulties; for immediate assignments of short duration; or for recurring intermittent short assignments when it is not practicable to follow normal recruitment or temporary promotion procedures to obtain qualified employees. Normally, assignments extending beyond 30 days may only be accomplished through promotions, not through additional pay assignments."

50. Plaintiff contends that the position of Group Master has now been established in accordance with the provisions of P. Ex. 11, P. 1. Plaintiff cannot state the date or administrative procedure used as the defendant refused plaintiff's written request to supply plaintiff with a copy of the personnel action that placed the establishment in effect. Plaintiff contends that the position of Group Master has now been prepared with a current rating description and appropriate rating title. Plaintiff contends that this current job description sheet of the Group Master position describes all of the duties that he is expected to perform in a normal eight-hour day, as is the standard requirement for job description sheets, therefore, plaintiff contends there are no additional skills or duties that he can perform in an eight-hour day that are beyond the scope of his present rating description to warrant an extra pay differential. Plaintiff contends that if the Group Master position is performing duties of a higher level of responsibility and is deserving of additional compensation, that the defendant should establish an appropriate pay rate to the current schedule of wages, to conform with the purpose of Paragraphs C and D, quoted above. Plaintiff further contends that former Shop Masters that were in charge of only one shop, have been rerated to Group Master and are still only in charge of one shop, and are now receiving the extra pay differential for non-existent additional duties.

51. Plaintiff contends that the increased compensation of the Group Master position was implemented in this irregular manner to attempt to disguise the actual downgrading and upgrading actions that have occurred in the former Shop Master positions, and to further the defendants' efforts to evade the provisions of statutes and regulations, with specific reference to Section 12 and 14 of the Veterans' Preference Act.

52. Plaintiff contends that his reduction-in-rank has been further shown by a loss of compensation since 11 Nov. 1961, the effective date of the increased compensation for the Group Master (see P. Ex. 13), in that, if the defendant had been accorded his full rights as conferred by statute and

regulation, he would have been in the Group Master position as of 1 Feb. 1961.

53. Government Exhibit 1, Item 11, p. 23, paragraph 3, last sentence, and paragraph 4 states:

"Unless and until a personnel action is taken by the shipyard, we cannot conclude that there has been an adverse action effected giving rise to the right of appeal to this office under Section 14 of the Veterans' Preference Act of 1944. It is accordingly our decision that Mr. Dugan's appeal is not within the purview of Section 14 of the Veterans' Preference Act of 1944 because no adverse personnel action has been effected by the shipyard."

54. The Regional Office of the United States Civil Service Commission in Government Exhibit 1, Item 11, has held in effect that the activity may, as part of the reorganization and redistribution of duties, assign plaintiff as one of plaintiff's duties, to sweeping the floors of one of the buildings plaintiff was in full charge of, providing that (1) the activity states to the Regional Office the title of Master Shipfitter was to be retained by Plaintiff while sweeping such floors; (2) that the activity states to the Regional Office that plaintiff was to retain the pay of Master Shipfitter while sweeping such floors, and (3) that the activity insures to the Regional Office that the activity has not issued to plaintiff a personnel action as a result of the redistribution of duties.

55. The Regional Office has held in effect since they have not defined any limitations that regardless of the extent of the reorganization or redistribution of duties and functions involved that, unless and until the activity issues a standard personnel action form, the activity may evade the provisions, intent, and purpose of the Veterans' Preference Act with the tacit approval of the Regional Office, as it will not be necessary for the Regional Office to take any official notice or take any action in such a situation until a personnel action on a standard personnel action form is issued by the activity, and the Regional Office has so informed the activity by this decision.

56. The plaintiff contends that the Regional Office decision thus created conditions that would allow the reduction in rank to be corrected only by recourse to action in the United States Courts. The Regional Office did, in effect, notify the Navy Department that the Commission would not take any action to sustain plaintiff's appeal action unless or until the Navy Department would first issue a formal action paper of some sort to plaintiff. The Regional Office must have fully realized that the Navy Department would not issue any standard personnel action form to the plaintiff under these circumstances, as the current interests of the Navy Department were to prevent the improper administrative conditions created by the implementation of the BuShips Shop Grouping Program being brought to the attention of the authorities responsible to correct such conditions. The situation then resolved itself to a completely effective impasse, in which United States Civil Service policy was that the Commission refused to act unless, or until, the Navy Department issued a standard personnel action form. The defendant's policy was, we will not issue such a form and we are not required to do so unless, or until, the Commission so orders us. If this situation had been deliberately pre-arranged by the Commission and the Navy Department it could not have been more effective in delaying and preventing final resolution by administrative remedies of the plaintiff's appeal action. In ruling as the first Civil Service Regional Office of the United States Civil Service Commission did in this matter, its action was tantamount to the Civil Service Commission's refusing to accept the responsibility outlined in Section 19 of the Veterans' Preference Act of 1944, as amended. Such action condoned the illegal and improper actions of the agency and compelled plaintiff to apply to the United States Courts for relief. The defendants and the United States Civil Service Commission must fully recognize that such Federal Court action is, in a majority of instances, completely beyond the fiscal capabilities of the wronged individual and the sum and substance of the matter is that the appellant is denied redress by administrative remedies. This compels the inquiry; "Is justice to be extended only to the person or

persons who have the financial means and the readiness to expend the necessary funds to foster Federal Court action?" The spirit of the Veterans' Preference Act of 1944 is not being properly construed in this instance and the United States Civil Service Commission is not fulfilling the obligation imposed upon it by Section 19 of the Veterans' Preference Act of 1944. Plaintiff contends that if this contention of the Regional Office, and the defendant, that a position change has not been effected because a standard personnel action form was not issued to the individual in the affected position, that a situation will be created by which any Government agency may evade or nullify the provisions, intent and purpose of the Veterans' Preference Act, Section 12 and 14, in that any Government agency will be enabled to reassign the functions and responsibilities, or change the organizational and reporting levels of the individuals in positions, and such changes may be unlimited in scope, provided only that the agency responsible for initiating such changes states to the United States Civil Service Commission that; the position has retained its title, the position has retained its pay, and insures to the United States Civil Service Commission that a standard personnel action form has not been issued to the individuals in the affected positions to officially reflect these changes.

"NCPI 1

"INSTRUCTION 1

"ADMINISTRATION OF "NAVY CIVILIAN PERSONNEL INSTRUCTIONS

"SECTION 1 GENERAL PROVISIONS

"1-1 LEGAL BASIS.

"Section 161 of Revised Statutes (5 USC 22) provides as follows:

'The head of each department is authorized to prescribe regulations not inconsistent with law for the government of his Department, the conduct of its officers and clerks, the distribution and performance of

its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.'

"Pursuant to the above-quoted provision of law, the publication, 'Navy Civilian Personnel Instructions,' is approved as the means by which overall civilian personnel instructions, policies and procedures for the governance of the Naval Establishment shall be prescribed."

"NCPI 1-2a. AUTHORITY FOR NCPI's IN U.S. NAVY REGULATIONS, 1948.

"a. Article 0785 of the U. S. Navy Regulations provides that in the administration of civilian personnel matters, commanding officers and other persons in the Naval Establishment shall be governed by:

- "(1) applicable provisions of law;
- (2) applicable provisions of proclamations and executive orders of the President;
- (3) applicable rules and regulations issued by the Civil Service Commission and other authorized agencies of the Government; and
- (4) detailed instructions issued by or under the directions of the Secretary of the Navy."

"NCPI 1-2d

"d. Navy Civilian Personnel Instructions, NAV-EXOS P-122, are issued in conformity with Article 0785 of the U. S. Navy Regulations, General Order No. 5 and SECNAV INSTRUCTION 5430.7C, and therefore have full force and effect for the guidance of all persons in the Naval Establishment."

"NCPI 1-2c

"c.

"To assure like treatment, rights, and obligations with respect to all civilian employees in the naval establishment."

"NCPI 1-4 Scope.

"The instructions prescribed in Navy Civilian Personnel Instructions apply to all civilian employees of the Navy and Marine Corps both in the departmental and field services, unless otherwise indicated in the instructions."

57. Plaintiff contends that all of the Navy Civilian Personnel Instructions, NAVEXOS P-122, or extracts from said Instructions, were derived from a complete reprint of NAVEXOS P-122, dated July 1960 and were in full effect at the Boston Naval Shipyard when the selection of the individuals to fill the Group Master positions was announced on 30 November 1960, and when the selections were placed in full, immediate, and permanent effect 1 Feb. 1961, and when the concurrent reassignment of the non-Group Masters to subordinate Head of Shop positions were placed in full, immediate, and permanent effect on 1 February 1961, by formal written order of the Shipyard Commander. This contention is based on the fact that these regulations were approved by R. E. Cronin, Chief of Industrial Relations on 26 August 1960, and have an issue date of 15 October 1960. Plaintiff therefore contends that the defendant, within the criteria of the NCPI's as quoted above, was required to abide by the provisions of the NCPI's as they have been previously quoted in this action, in relation to reorganization, reassignment, establishment of positions, adverse actions, reduction-in-force procedures, and retention preference regulations; and they did not.

58. The record here presents sufficient factual basis to justify a trial upon the issue of whether plaintiff experienced a reduction in rank within the meaning of Section 14 of the Veterans' Preference Act. Under such circumstances plaintiff should have his day in court for an opportunity to prove his contentions.

59. Section 14 of the Veterans' Preference Act (5 USC 863) provides:

"No permanent or indefinite preference eligible, who has completed a probationary or trial period em-

ployed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be . . . *reduced in rank* or compensation, . . . except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice . . . stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from *an adverse decision of the administrative officer* so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: . . ." (emphasis supplied)

60. It will be noted that the requirements for a reduction in rank are the same with respect to the other stated actions such as discharged, suspended and that they all require reasons to be given in writing and thirty days' advance written notice.

61. Reassignments, such as occurred in the instant case, are covered by the Navy Department Regulation known as NCPI 351.2-3 USE OF REDUCTION-IN-FORCE PROCEDURE.

"a. When one or more employees are to be released from a competitive level by . . . reassignment involving displacement, . . . reorganization . . . all resultant actions are reduction-in-force actions and must be effected in accordance with this instruction."

62. In Defendants' "Memorandum of Points and Authorities" in support of their "Motion for Summary Judgment," they aver that Sections 14 and 12 of the Veterans' Preference Act are not applicable herein, and in

any event this court lacks jurisdiction to grant plaintiff the relief he seeks.

63. We respectfully submit that a reduction in rank, just like a reduction in force or demotion occurring in connection with a reorganization invokes reduction in force procedure.

A demotion occurring in connection with a reorganization amounts to a reduction in force; and preference eligible employees demoted in the course of such reorganization are entitled to the benefits of Section 12 of the Veterans Preference Act of 1944 and the Civil Service Regulations governing reduction in force. (*Ritter vs. Strauss*, 261 Fed., 2d, 767 at page 771) (*Parkes vs. U.S.*, 147 F. Supp, 261, 137 C. Cls., 297)

64. The courts have enforced the provisions of the Veterans' Preference Act on many occasions.

a. In *Manning v. Stevens*, 208 Fed. 2d, 827, notice of separation was deficient in the failure as required by Section 14 of the Veterans' Preference Act to state any and all reasons "specifically and in detail" for the action proposed. The veteran's complaint in that case was held to be well founded and he was entitled to the protection of the statute. To the same effect, see the following cases:

Money v. Anderson, 208 Fed. 2d, 34;

Deak v. Pace, 88 U.S. Appeals D.C., 50; 185 Fed. 2d, 997.

b. *Mulligan v. Andrews*, 211 Fed. 2d, 28. It was alleged, and the Appellate Court held, that the charges alleged against plaintiff were not sufficiently specific.

c. In *Reynolds v. Lovett*, 201 Fed. 2d, 181, the Court held that the failure of the administrative officer to give effect to Section 12 of the Veterans' Preference Act (5 USCA, 861) was erroneous when honorably discharged soldiers were reduced in positions and grades, while non-veterans in the same classifications

were retained. Although the officers said that these men were demoted because they were not qualified for the supervisory nucleus, composed of the best craftsmen, and each was carefully selected on the basis of his individual qualifications, the non-veterans being deemed to be better qualified for supervisory positions, the Court held "We think that appellees' view that when personnel is reduced the head of an agency may select employees to be retained in any classification on the basis of individual merit and without giving effect to Section 12 of the Veterans' Preference Act is erroneous."

65. These and other similar decisions have held the various parts of Section 14 of the Veterans' Preference Act to be binding on the government officers. No specific decision of the courts on the question of reduction in rank has come to the attention of plaintiff's counsel, but, in those cases in which the court has acted where the provisions of the Veterans' Preference Act were being considered, the above cited cases and many others, the court has upheld the binding effect of Section 14 of the Veterans' Preference Act and there is no reason to believe that the matter of reduction in rank, which appears in the instant case, as mentioned in the Veterans' Preference Act, should be considered in any other manner. I, therefore, urge this Court to enforce the provisions of Section 14 of the Veterans' Preference Act in this case.

66. In view of the fact that Defendants have not acted in this case in accordance with the Department's regulations, and have not recognized the Veterans' Preference Act, it is obvious that their Motion for Summary Judgment should be denied.

Respectfully submitted,

WARREN E. MILLER,
810—18th Street, N. W.,
Washington, D. C.,
Attorney for Plaintiff.

I Certify that I have mailed a copy of the foregoing points and authorities and exhibits #10-13, postage prepaid, to Ellen Lee Park, Assistant United States Attorney this 6th day of September, 1963.

/s/ WARREN E. MILLER,
Attorney.

PLAINTIFF'S EXHIBIT 10

BOSTON NAVAL SHIPYARD

BNSINST 4860.3A
301-427

15 August 1961

BOSNAVSHIPYD INSTRUCTION 4860.3A

Subj: Designation of Production Department Shops and their functions

1. *Purpose.* The purpose of this instruction is to disseminate a brief description of the functions of the various Production Department Shops.

2. *Cancellation.* Boston Naval Shipyard Instruction 4860.3 is cancelled and superseded by this instruction.

3. The following Production Department Shops, in the Shop Group indicated, operate in the Boston Naval Shipyard:

Shop Group	Shop No.	Shop Name	Acct. No.
Structural.....	11	Shipfitter Shop.....	911
Structural.....	17	Sheetmetal Shop.....	917
Structural.....	26	Welding Shop.....	926
Machine, Tool and Foundry..	06	Central Tool Shop.....	360
Machine, Tool and Foundry..	31	Machine Shop (Inside).....	931
Machine, Tool and Foundry..	81	Foundry Shop.....	981
Machine, Tool and Foundry..	94	Pattern Shop.....	994
Machinery.....	38	Machine Shop (Marine).....	938
Machinery.....	41	Boiler Shop.....	941
Machinery.....	56	Pipe and Copper Shop.....	956
Electrical-Ordnance.....	36	Weapons Systems Shop.....	936
Electrical-Ordnance.....	51	Electric Shop.....	951
Electrical-Ordnance.....	67	Electronics Shop.....	967
Service.....	64	Woodworking Shop.....	964
Service.....	71	Paint Shop.....	971
Service.....	72	Riggers and Laborers Shop..	972
Service.....	99	Temporary Service Shop....	999
None.....	23	Forge Shop.....	923
None.....	97	Ropewalk.....	997

Each of these shops is under the supervision of a Shop Head, who is responsible to the Group Master for the functions of his respective shop. Group Masters and the Heads of Shops 23 and 97 who are not part of any Shop Group report to the Production Officer.

4. A short summary of the trade responsibilities of each Production Shop is as follows:

a. STRUCTURAL GROUP

The Structural-Group comprises shops 11, 17 and 26 and is under the direction of the Master Sheetmetal Worker. Responsibilities of the Shops of the Structural Group are:

(1) Shipfitter Shop, Shop 11

Shop 11 is the hull structural shop. It is equipped and staffed to:

- (a) Layout, fabricate, assemble and erect all structural parts of a ship, generally ten gauge or heavier.
- (b) Lay out lines and offsets for all structural work
- (c) Provide templates for structural and other work
- (d) Accomplish all structural fabrications, assemblies, and installations
- (e) Accomplish all hull outfitting work of a structural nature.
- (f) Perform operations pertaining to punching, shearing, hot shaping, cold rolling, etc.
- (g) Perform inspection of structural work
- (h) Perform shipping, caulking and riveting work on metals
- (i) Perform tank and compartment testing and submit reports
- (j) Perform drilling operations required for fabrication, assembly and erection of structural and non-structural members
- (k) Install label plates, except those on electrical boxes
- (l) Manufacture and install pipe hangers.

(2) Sheetmetal shop, Shop 17

(a) Layout, fabricate and install bulkheads, partitions, stowages, containers, messing, berthing, living facilities and all sheet metal work in connection with ventilation and air conditioning made from materials generally 10 gauge or lighter. Appurtenances for ventilation and air conditioning work made from materials $\frac{1}{4}$ " thick or less will be manufactured by the Sheetmetal Shop.

(b) Perform such services as anodizing, electroplating, metal coating, metal finishing, buffing and polishing.

(3) Welding Shop, Shop 26

The Shop Head of the Shipfitter Shop (Shop 11) also acts as Head of the Welding Shop. The shop is equipped to accomplish all types of ferrous and non-ferrous welding and burning by the electric arc or gas methods as indicated below:

(a) Metallic arc process with equipment for individual operation or multiwelding operation.

(b) Aircomatic process. Inert gas shielded, metallic arc with manual, semi-automatic or automatic operation.

(c) Heliarc process. Tungsten arc, non-consumable, inert gas shielded for manual operation.

(d) Union melt process. Flux submerged metallic arc for manual or automatic operation.

(e) Stud welding. Individual or semi-automatic operation for all sizes of studs up to a generator capacity of 2000 amperes.

(f) Electric arc-inert gas cutting for shape or straight line cutting by the Linde or Aircomatic methods. Manual or automatic up to and including aluminum of $1\frac{1}{2}$ " thickness.

(g) Gas welding of all ferrous and non-ferrous metals.

(h) Metal spraying by powder or wire feed, manual or automatic operation.

(i) Application of Thiokol (Polysulfide Polymer coating) for underwater corrosion protection.

(j) Flame heat treating of metals requiring this process.

(k) Flame cutting of non-ferrous metals. Manual and automatic methods.

(l) Flux cutting of non-ferrous metals. Manual and automatic methods.

PLAINTIFF'S EXHIBIT 11

DEPARTMENT OF THE NAVY

Bureau of Ships
Washington 25, D.C.

BUSHIPS 12531
Ser 720-2014

17 August 1961

BUSHIPS NOTICE 12531

From: Chief, Bureau of Ships

To: Commanders, All U. S. Naval Shipyards

Subj: Requests for establishment of Group Master ratings

Ref: (a) BUSHIPS Note 5450 of 15 May 1961

Encl: (1) Sample job description for shop group Master Mechanic

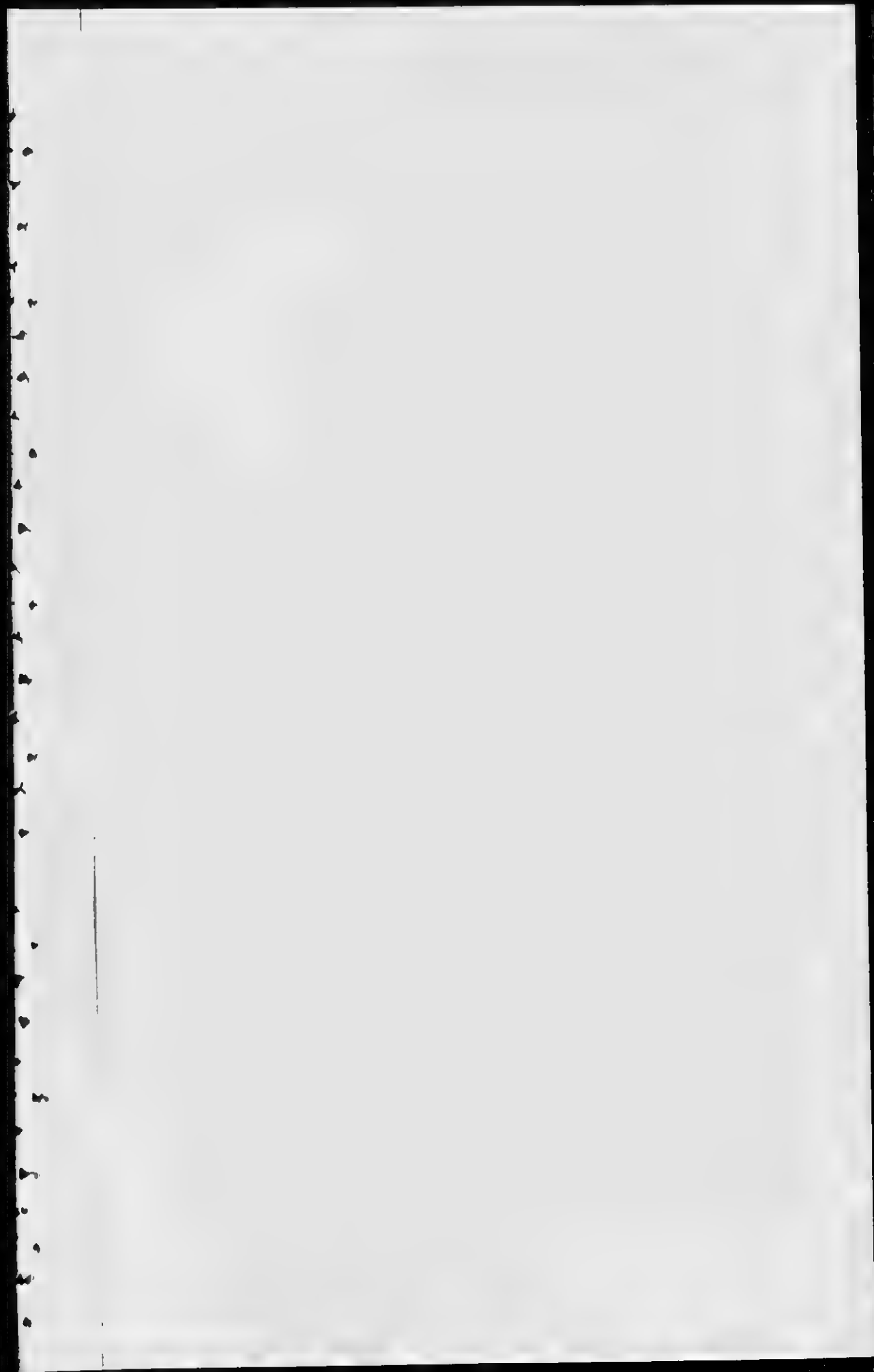
1. *Purpose.* This Notice requests addressees to submit appropriate rating requests for shop group Master Mechanic jobs.

2. *Background.* Reference (a) announced that the concept of shop grouping is now considered permanent and incorporated it into Standard U. S. Naval Shipyard Regulations. It is necessary, therefore, that current rating descriptions be prepared and appropriate rating titles established for shop group Master Mechanic positions.

3. *Rating Titles.* It is recognized that the grouping of shops varies somewhat among shipyards. It is the Bureau's intention, however, to recommend to the Office of Industrial Relations establishment of the minimum number of titles which will be representative of the primary function of the group. The following five titles will be used when the shop group contains certain specified shop combinations,

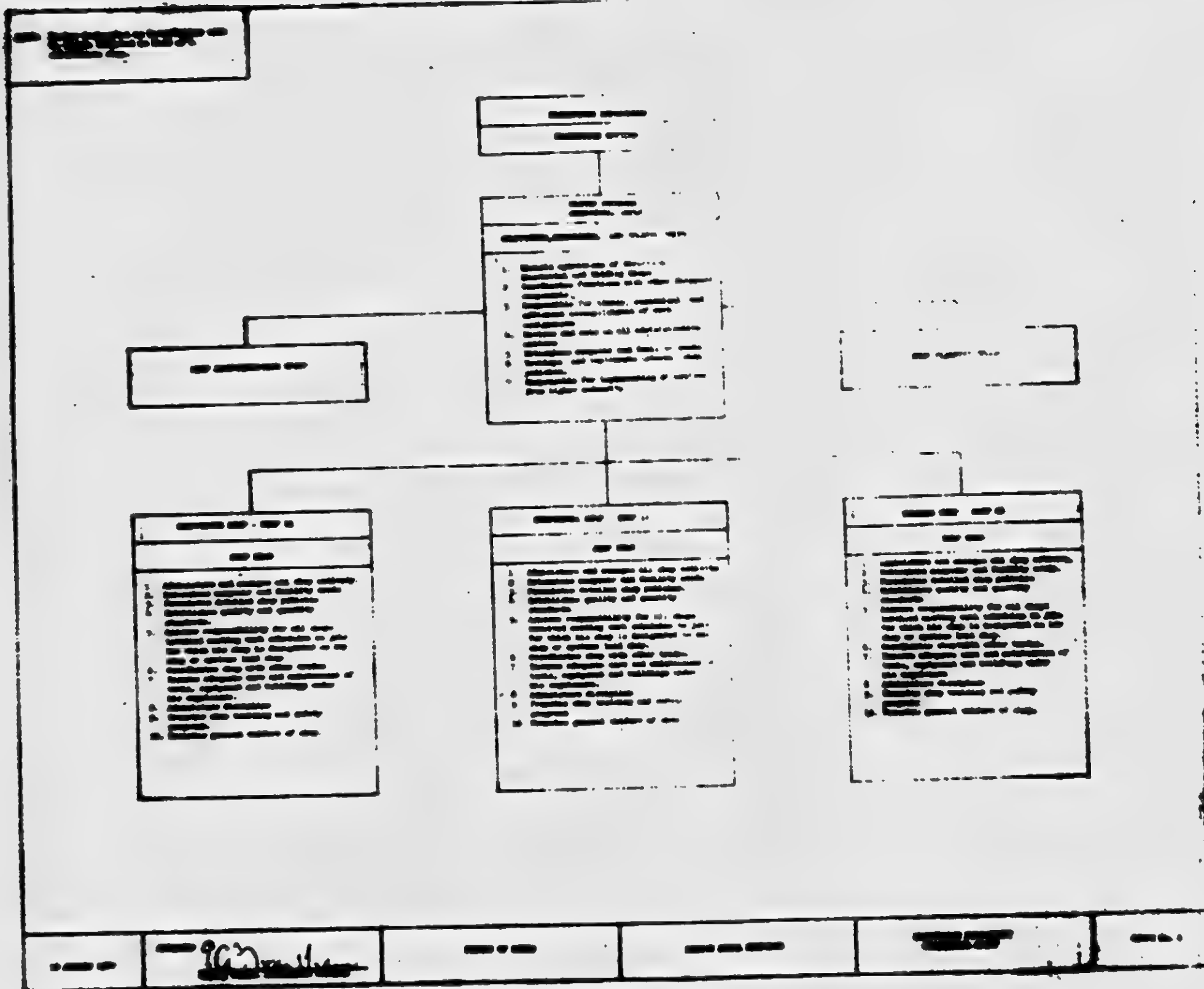
Title	Minimum Shop Grouping
Master Mechanic (Electrical/Electronic Group)...	51 and 67
Master Mechanic (Mechanical/Machinery Group)...	31, and 38 or 06
Master Mechanic (Outfitting Group).....	56 and 41, 17 or 38
Master Mechanic (Service Group).....	72, and 71 or 64
Master Mechanic (Structural Group).....	11 and 26

4. *Action Required.* Each addressee is requested to prepare a job description for each production shop group master billet in accordance with provisions of NCPI 531.3-4d. It is suggested that enclosure (1) be used as a basic format.

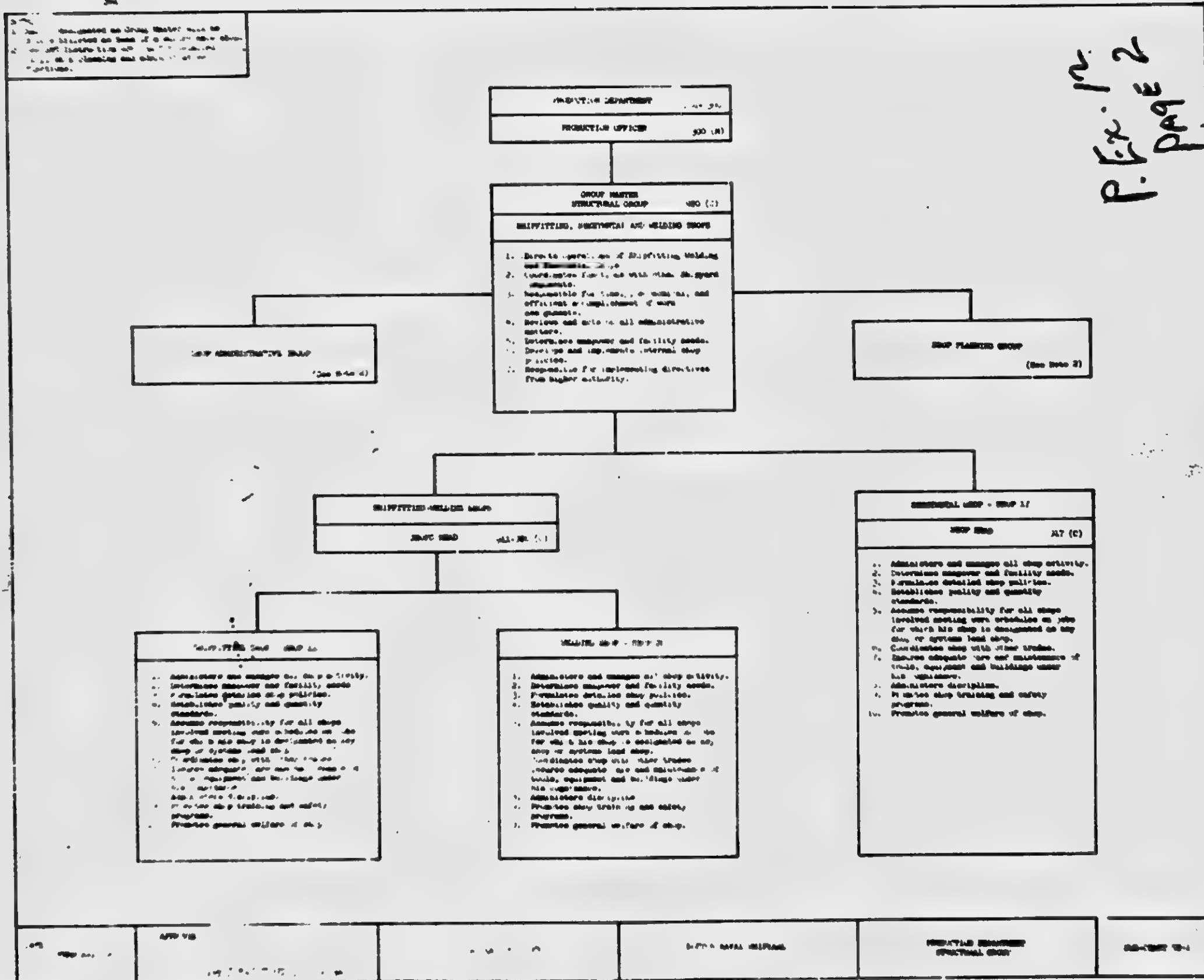


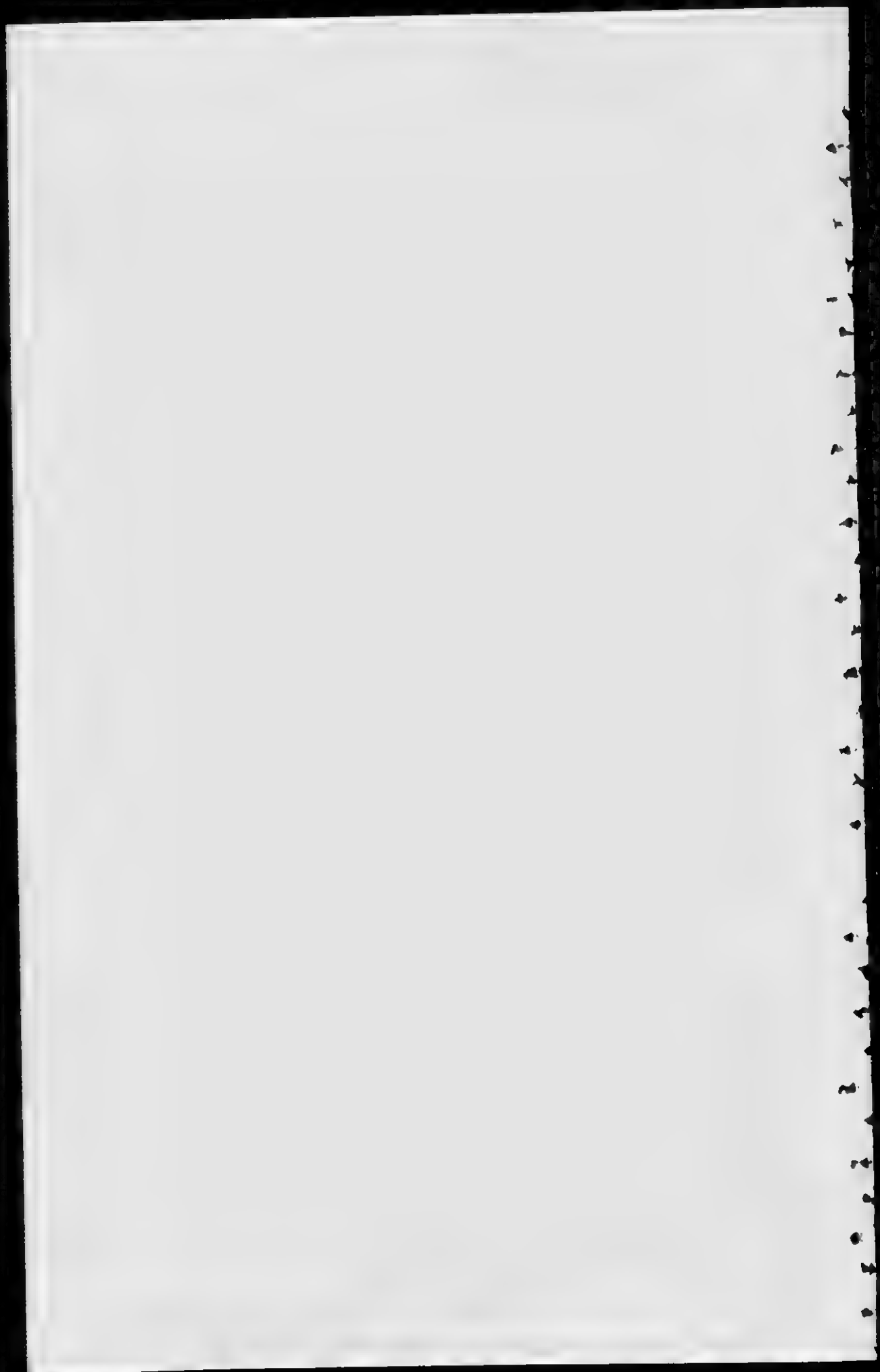
PLAINTIFF'S EXHIBIT 12

51



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from the original bound volume





PLAINTIFF'S EXHIBIT 13

DEPARTMENT OF THE NAVY
Office of Industrial Relations
Washington 25, D.C.

OIR 12531
OIR 414:ajt
29 Oct 1962

OIR Notice 12531

From: Chief of Industrial Relations
To: Distribution List
Subj: Amendment to Additional Pay Schedules

1. *Purpose.* This Notice establishes an additional pay schedule for those masters at shipyards who are officially designated as "Group Masters."

2. *Action.* Effective at the beginning of the first pay period following date of this Notice, the following is added to the additional pay schedules:

Kinds of Employees	Kind of Work	Additional Pay Differential
Master mechanics at shipyards when specifically designated as group masters	While officially assigned to supervise specific major shop groups in naval shipyards	\$36 per hour. This represents 12% of the 10-area (NCPI) average of the second step of pay level 11 (This amount will be set annually by OIR)

3. *Cancellation.* This Notice will be canceled when NCPI 531 has been amended, and for record purposes on 30 April 1963.

M. J. LAWRENCE

DISTRIBUTION: (10 copies each)

A2A (only AO, COMPT), A3, A5
E7, L1, L40

OIR Special List 25f and
Selected Addressees

PLAINTIFF'S EXHIBIT 1

PORTSMOUTH NAVAL SHIPYARD
Portsmouth, New Hampshire

3 Nov. 1960.

INFORMATION BULLETIN No. 66-60

Subj: Shop Grouping.

1. This Shipyard will in the near future undertake a grouping of Production Department Shops in implementation of a portion of the BuShips overall program for reducing the cost of ship work.

2. The objectives of the shop grouping include better job coordination, reduction of duplication, better utilization of manpower, equipment and space and reduced shop overhead costs—to provide significant savings which may be applied to provide better service to the fleet at lower cost.

3. Five functional groups of shops will be established. *Each group will consist of shops with related functions.* Individual shops, as well as trades, will retain their identities within the groups. *Present heads of shops will retain control of their shops but in each group the head of one of the shops will be administratively selected to head the group.*

4. The group master will exercise overall coordination among the shops of his group. To this end certain consolidation of the shop office functions will be effected and some reassignments of personnel will be required. *The administrative assignment as group master will not constitute a promotion for the master so assigned, nor will there be reductions of existing shop masters or other line supervisors in implementation of this plan.*

5. Action to implement the plan will be taken in increments. The first grouping action may be expected in December and successive groupings at the approximate rate of one per month.

6. Shop groupings will be as follows, although implementing action may not be in the order indicated here:

- a. Structural Group—Shops 11, 17, 23, and 26.
- b. Mechanical Group—Shops 06, 31, 37, 81, and 94.
- c. Outfitting Group—Shops 38 and 56.
- d. Electrical-Electronics Group—Shops 51 and 67.
- e. Service Group—Shops 64, 71, 72, and 99.

7. *Group masters will be assigned and each will undertake the development of a plan of action for the implementation of the objectives of the plan for his group.*

8. Additional information will be published as the implementation of the shop grouping plan progresses.

H. P. RUMBLE,
Captain, U. S. Navy, *Shipyard Commander.*

DISTRIBUTION:

B, C, D, G, H, H-1, I, J,
K, L-1, M, N, S

AUTHENTICATED:

T. S. MARDEN,
Adm. Asst. to the Commander.

Remove from bulletin boards, 23 Nov. 1960.

PORTSMOUTH NAVAL SHIPYARD
Portsmouth, New Hampshire

INFORMATION BULLETIN No. 74-60

28 Nov. 1960.

Subj: *Designation of Group Masters*

1. *In furtherance of the BUSHIPS program to reduce the cost of building and repairing ships, a plan for grouping Production Department shops was announced in early November. To make this plan work, we need the continued loyal support of all employees and we need men to head the groups around whom all of you from the Masters on down will rally. I sat with a Board virtually all the past two weeks examining the qualifications and capabilities of all Masters in a sincere desire to select these men.*

2. Let me say I have the utmost confidence in all our Masters and Foremen. You are in good hands working with them and for them. However, it was necessary that we make selections to head the groups. I hope our judgment has been correct. Our selections are as follows:

Structural Group	
Shops 11, 17, 23, 26.....	D. F. Rafferty
Mechanical Group	
Shops 06, 31, 37, 81, 94.....	P. C. Hughes
Outfitting Group	
Shops 38, 56.....	W. G. Poor
Electrical Group	
Shops 51, 67.....	V. D. Adjutant
Service Group	
Shops 64, 71, 72, 99.....	F. S. White

3. As was previously announced, each group consists of shops with related functions. Individual shops, as well as trades, retain their identities within the groups. Present heads of shops will retain control of their shops *except that in each group the head of one of the shops has been administratively selected to head the group and in that shop a new shop head will be selected.*

4. The objectives of the shop grouping include better job coordination, reduction of duplication, better utilization of manpower, equipment and space and reduced shop overhead costs—to provide significant savings which may be applied to provide better service to the fleet at lower cost.

5. *The Group Master will exercise overall coordination among the shops of his group. To this end certain consolidation of the shop office functions will be effected and some reassignments of personnel will be required. The administrative assignment as Group Master does not constitute a promotion for the master so assigned, nor will there be reductions of existing shop masters or other line supervisors in implementation of this plan.*

6. Further action to implement the plan will be taken in increments. The first grouping action will become effective 1 January 1961, and will be the grouping of Shops 51 and 67. Successive groupings will be initiated at the approximate rate of one per month. It will continue to be our policy to keep all hands informed of our future plans.

7. I urge all of you to cooperate to make this program a success because your own success is tied closely to that of the Shipyard as a whole.

H. P. RUMBLE,

Captain, USN Commander of the Shipyard.

DISTRIBUTION:

B, C, D, G, H, H-1, I, J
K, L-1, M, N, S

Remove from Bulletin Boards, 5 December 1960.

Shop Groupings

26 January 1961.

Portsmouth, New Hampshire
Group

Group Master

11-17-23-26.....	D. F. Rafferty (17)
06-31-37-81-94.....	P. C. Hughes (06)
38-56.....	W. G. Poor (38)
51-67.....	V. D. Adjutant (51)
64-71-72-99.....	F. S. White (72)

Boston, Massachusetts
Group

Group Master

No Change 11-17-26.....	F. J. Simon (17)
38 (Ord) -51-67.....	E. J. Powers (67)
64-71-72-99.....	J. E. Mahoney (72)
38 (less Ord) -41-56.....	G. P. Chamberlain (56)
06-31-81-94.....	J. F. Golden (31)
23.....	P. Ivas (23)
97.....	D. Himmelfarb (97)

Brooklyn, New York
Group

Group Master

11-23-26.....	H. A. Staneski (11)
06-31-36-38.....	W. Wehrmann (38)
17-41-56.....	L. W. Ferris (56)
No Change 64.....	A. Stalker (64)
36-51-67.....	L. Tulipan (51)
71-72-74-99.....	D. Stea (74)

Philadelphia, Pennsylvania
Group

Group Master

No Change 11-26.....	T. O. Maginnis (11)
51-67.....	E. LaFurno (51)
64-71-72-99.....	A. Ericson (64)
17-41-56.....	F. J. Robertson (41)
06-31-38-81.....	B. L. Pearson (38)
03-07.....	S. T. Kershaw (07)
No Change 02.....	W. F. Dowling (02)

Portsmouth, Virginia

Norfolk, Virginia
Group

Group Master

No Change 11-17-26.....	H. W. Moreland (11)
06-23-31-35-38-81-99.....	C. R. Warren (31)
51-67.....	O. L. Mullican (51)
64-68.....	B. C. Williams (64)
71-72-74.....	C. W. Beninghove (72)
25-27-41-56.....	R. E. Lucas (56)

Charleston, South Carolina
Group

Group Master

11-17-26-27-41.....	J. L. Harper (11)
51-67.....	W. M. Sullivan (51)
23-25-31-38-56-81-94.....	H. E. Miller, Jr. (56)
06-64-71-72-74-99.....	R. N. McDaniel (71)

Group	Group Master
Long Beach, California	
Group	
64-71-72.....	A. O. Faircloth (72)
38 (Ord) -51-67.....	J. J. Lambert (51)
06-31-99.....	W. D. Clement (31)
23-38-41-56-81.....	H. W. Richter (38)
11-17-26.....	C. H. Richards (17)
San Francisco, California	
Group	
No Change 11-26.....	J. A. Judnich (11)
06-23-31-38-99.....	R. R. Stevens (06)
No Change 51-67.....	H. L. Woolsey (51)
17-41-56.....	F. C. Winalow (56)
64-71-72.....	R. D. Cherrigan (72)
03-07.....	B. K. Curry (07)
No Change 02.....	J. A. Kinkead (02)
Mare Island, California	
Group	
11-23-36-81-94.....	T. C. Bunch (81)
06-31.....	R. T. Getchell (06)
36-51-67.....	P. F. Minasian (67)
38-41-56.....	I. H. Whitthorne (56)
02-03-07.....	R. P. Tye (07)
64-72-99.....	E. W. Martinez (72)
17-71.....	D. L. Hughes (17)
Bremerton, Washington	
Group	
No Change 11-26.....	D. T. Calhoun (11)
06-23-31-38-81-94.....	E. D. Moskeland (06)
17-41-56.....	E. Tennyson (17)
38 (Ord) -51-67.....	W. O. Wesseler (51)
64-71-72-99.....	F. L. Timmerman (72)
Pearl Harbor, Hawaii	
Group	
11-17-23-26-27-41.....	W. D. Bennett (11)
64-71-72-81-99.....	H. A. Morley (71)
06-31-38-56.....	J. W. Edwards (06)
No Change 51.....	A. P. Perry (51)
No Change 67.....	J. F. Lempery (67)
02-03.....	C. D. Yancey (02)
No Change 07 (Public Works Center).....	R. W. Finn (07)

100,000 READERS

THE NEWSPAPER THAT GOES
INTO ALL THE HOMES
EVERY DAY.

Vallejo Tim

SOLANO COUNTY'S
FRIDAY, DEC. 2, 1960

EIGHTY-SIXTH YEAR—NO. 78.

VALLEJO, CALIF.—HOME OF MARE ISLAND NAVAL SHIPYARD

Mare Island To Regroup Shop Setup

21 Units Will Become Seven Under Program

Mare Island's 21 production department shops are to be realigned into seven groups, it was revealed yesterday by Rear Adm. L. V. Honsinger, USN, shipyard commander.

IT'S RICH

LOCAL ANGLE — The local area around Vallejo seems to hold a strange fascination for advertising photographers.

Several months ago, the supporting structures for the new parallel Carquinez Bridge span were featured as a backdrop for an auto company ad.

One eagle-eyed reader phoned yesterday to say that Vallejo was again the subject of an advertising photo, although not identified by name.

The ad in question appears in this week's Time magazine on page 64. It shows the stretch of freeway between Hunter's Hill and the Redwood St. overpass to demonstrate that a manufacturer's drive is "speedway proven."

The local California Highway Patrol office will probably agree with that definition.

ANOTHER LOCAL ANGLE —

*P. Exhibited 1
P. page 8*

Admiral Honsinger said no trades would be discontinued at the shipyard as a result of the change, nor will the realignment mean a reduction in the work force.

The shipyard commander said Mare Island is the last of 11 naval shipyards to make the change. He said the realignment "should result in improved operation of the yard... and should cut down the overhead."

These factors, Admiral Honsinger added, should help Mare Island match competition of other yards in striving for a steady workload.

PANEL STUDY

The decision on grouping was made by a panel made up of officers, masters, foremen, and naval civilian administrators. The 12 members conducted studies over a three-month period to determine how the grouping should be done.

Their plan is to lump the riggers, woodworkers and maintenance shops into a "Service Group"; the machine shops 01 and 31 into a "Machinery Group," and three Public Works shops, 02, 03 and 07 into the "Plant and Utilities Group."

The shipfitters, patternmakers, blacksmiths, welders and molders will be amalgamated into a "Hull Structure Group" while marine machinists, toolmakers, pipe and steamfitters shops will be placed together in a "Machinery Outfitting Group."

GAMBLING 'GRUDGE' HINTED IN KIDNAPING

SAN DIEGO (AP)—Officials said Thursday they are looking into a reported grudge over a rejected \$75,000 gambling ticket which may have figured in the Anthony Alessio kidnaping.

Frank Marrone, one of five suspects charged in the abduction, was a partner of the man with the ticket, Marrone's attorney said.

The ticket was held by Earl J. Jones of Los Angeles, who in July sued the Calliente race track at Tijuana, Mexico, and the Alessio family for the \$75,000.

The track refused to honor the ticket which showed six winners, saying it had been altered.

Alessio and two of his six brothers are directors of the track.

"I assume that Marrone and some of the Alessios knew each other," said Police Chief A. E. Jansen. "I don't know for sure if Marrone and Tony Alessio were acquainted."

HULL GROUP (CONT.)

Sheetmetal workers and painters will comprise a "Hull Outfitting Group," and the "Electric-Electronics Group" will be made up of electricians, electronics technicians and ordnance machinists.

One by-product of the realignment will be the downgrading of some current shop masters. There will be only seven masters, one for each group, under the new arrangement. Shipyard management has made some preparation for this by closing masters' berths in recent months wherever they have

See REGROUP Page 2

REGROUP

From PAGE ONE:

become vacated by retirements.

Nevertheless, there are 14 masters heading shops at Mare Island now. The new setup will find half of them removed and placed in lesser positions.

Admiral Honsinger said it would be several months before the consolidation of shops goes into effect, although shipyard management will begin to implement the plan in a few weeks.

The new program marks the first major reorganization of shipyard shops in decades, although there has been some grouping of shops since World War II.

At the time of World War II, shipyard shops were organized into three main groups: hull, machinery and outfitting.

by FBI agents after Agents have recovered

Seen idburst jo Area

showered storm drains flooded in sections, flooded store fronts, flooded garages and basements and overflowing gutters from the season's first heavy storm which covered the entire San Francisco and North Bay area.

The Vallejo area escaped the passing winds which accompanied the storm in other parts of Northern California and were directly responsible for the death of at least one person.

Eugene Lohsen, 37, a San Mateo County ranch hand was crushed to death when the roof of a windmill barn crashed into him.

The windmill was located on the Half Moon Bay ranch owned by Lohsen.

PLAINTIFFS' EXHIBIT 2

Copy

Request for Amendment to
Activity Schedule of Wages
Navexos-3473

Your Request No. (hh)

A. Final Action (Not for Activity Use)

1 Approved as	a. Rating Title		b. 2nd Step Rate	
	c. Group and Service	d. Signature of person authorized to take final action	e. Date	

B. Recommendations

1.	Rating Title	Group and Service	2nd Step Rate	Initials	Date
a. Awco					
b. Bureau					
c. Activity	Master Shipfitter	Laborer, Helper & Mechanic Service (Group IVa)	\$10,857.60		9/23/57

2. Remarks

Description requested by OIR Notice 12250 of 26 June 1957

O. General Information					
1. Present Title		Master Shipfitter		Number Employed	Rate (If any)
				1	\$10,420.80
2 Location	a. Labor Market area	c. Sub-divisions			
	Boston, Mass.	First	Second	Third	
	b. Activity	Production Dept.			
Boston Naval Shipyard		Shop 11-26			
D. Job Description					
(For Instructions for preparing Job Description—See NAVEXOB-3473A)					
1. The Attached is a Complete and Accurate Description of the Duties and Responsibilities of This Job.					
a. Signature of Person Preparing Description				Date	
Francis J. Duncan, Master Shipfitter					9/23/57
b. Signature of Head of Shop				Date	
J. E. Flynn, Captain, USW, Production Officer					9/23/57
c. Signature of Head of Activity, or Designated Representative				Date	

BOSTON NAVAL SHIPYARD

Master Shipfitter

I. Duties and Responsibilities

I am responsible for the executive direction, administrative control, and technical competence of all components of the Structural Shop. I am responsible for administering, coordinating, and directing the work of the Structural Shop which encompasses the Shipfitter Shop, Shop 11 and the Welding Shop, Shop 26, in a safe, efficient, timely, economical and productive manner. I am also responsible to insure that all work performed meets the quality standards as imposed by the rigid specifications contained in the Navy Department General Specifications, plans, briefs, good structural shop practice, etc.

The Structural Shop lays out, fabricates, assembles, installs, erects, repairs, performs tests, and dismantles structural & non-structural metal parts of ships, barges, salvage pontoons, caissons, boats, cranes, tanks, misc. metal work as assigned by appropriate authority, using a variety of hand and power tools and machines for bending, rolling, shaping, beveling, drilling, punching, shearing, planning, straightening, sawing, hammering, furnacing, caulking, chipping, scarfing, grinding, testing, reaming, countersinking, counterboring, spot facing, filetting, tapping, flanging, joggling, bolting-up, mitering, nibbling, fastening, riveting, forming, flame cutting, gas welding, electric welding, thio-koling, metal spraying, brazing, silver soldering, preheating, heating, post heating, stress relieving, positioning & alignment, and temporary securing of parts, as required to meet the specifications for the finished product required.

The above operations are performed, as required, on iron, steel, aluminum, copper, bronze, brass or any other metal or metal alloy used in the processing of productive work on metal items and structures. The structural Shop also performs these operations on plastic experimental installations.

The Mold Loft in Shop 11 lays out the lines of a ship to full size in the various plan views, working from a table

of offsets and applicable plans. The Mold Loft develops and constructs to full size, templates, molds, and patterns, of wood, paper or metal that are used as guides in the layout and fabrication of the various structural parts of a ship, or other metal structure *as assigned under my direction.*

I have the overall responsibility to insure that the compilation of Weight Control data, on all ships requiring same at this activity, is properly compiled and forwarded to the Design Section. This data must be procured from all areas performing work on subject ships, as specified in current directives and instructions.

Shop 11 Drilling Section is also responsible for timely procurement and installation of all label plates on all hull, ventilation, and piping systems, including Warning and Safety Precaution Plates on all ships, as required, undergoing construction repair, or overhaul at the Boston Naval Shipyard. A recent sample is the installation of approximately 26,000 label plates on the prototype ship LST 1173. Shop 11 Drilling Section also is responsible to measure, layout, fabricate and install, all pipe hangers for the piping systems, for all wave guide installations, and to fabricate the cable racks for all cable runs, on ships requiring such work at this Shipyard.

I normally work through the Foreman Shipfitter and the Foreman Welder, and/or thru the other subordinate supervisory personnel. *I am in complete charge of all work assigned to the Shipfitting and Welding Shops with respect to production, maintenance of equipment, and the direction and training of personnel. Based on my familiarity with all classes of work performed by journeymen under my supervision, using an intimate knowledge of modern industrial and up to-date administrative methods, I plan work programs, establish completion dates and organize and schedule work to subordinates so as to effect and accomplish the mission of the activity. I must coordinate the work of my shop with that of other shops and departments; prepare, or advise in the preparation of plans and specifications; make accurate estimates of time and labor costs; promote adequate shop training and safety programs, establish and maintain discipline and satisfactory employee*

relations; administer the shop leave program; understand and apply the Navy's program of personnel administration, and perform other administrative duties as assigned. When I am faced with problems that are beyond my authority or responsibility I present them promptly and clearly to higher authority for consideration, with my recommendations for possible solution.

I am responsible to insure that proper instructions with respect to the activities of all shops 11/26 employees are prepared and implemented. I insure the maintenance of an adequate and well rounded supervisory force. I am responsible to insure that periodic reports concerning the productive efficiency of the Industrial Production Sections are prepared. I direct a comprehensive and effective Production Planning and Control Program, and perform the various executive functions associated with the management of a large and diversified Naval Shipyard Shop.

I am required to have a well rounded knowledge of naval shipyard activities and a comprehensive knowledge of the various tools, equipment and material necessary for the efficient, economical, and timely performance and completion of work as well as a thorough knowledge of the techniques and mechanical requirements of the functions of the Shipfitter and Welding Shops. I am required to have demonstrative ability to administer a major organization and to manage experienced employees. I am required to make decisions & commitments regarding the work performed by shops 11/26.

I am charged with the upkeep, security and maintenance of buildings and equipment under the jurisdiction of the Structural Shop.

I am responsible to insure that appropriate methods, procedures, sequences, and instructions are devised and implemented to enable Shops 11/26 to meet or better all commitments with other departments, shops, ships or activities.

I am responsible to insure the initiation of appropriate action to forestall or minimize the effect of problems that have an adverse effect on Shops 11/26 meeting its commitments. My performance of these duties is evaluated by the manner in which shops 11/26 coordinate the performance of its assigned duties with other shipyard depart-

ments, shops, ship and activities so as to enable the Boston Naval Shipyard to meet its commitments and accomplish the mission of this activity.

Assigned work for the Structural Shop is received by the Production Dept. and transmitted to me for action. I am required to advise the Production Officer when decisions of a vital nature are to be made, and to assist him in making those decisions. I am guided generally by Navy Department manuals and directives and shipyard regulations. My duties are highly diversified and can be accomplished by me because of my many years of experience in shipbuilding and repair work in positions of high level and responsibility. I am required to use my judgment in the solution of production problems as they arise. Since the effect of my decisions are broad and pervasive, my judgment must of necessity be correct.

I am responsible to insure that detailed emergency plans are devised and implemented to suit the needs of the Structural Shop, and provide needed services to all other areas within the Shipyard and its annexes in the event of enemy attack, destructive weather or natural disasters.

I am responsible to establish effective technical liaison between the Structural Shop and design agents, contractors and other agencies.

Shop 11 receives custody of all metal sonar domes and is responsible for timely delivery to point of end use. Shops 11/26 are responsible for the installation of the sonar dome or sonar dome mounting skirt on all such installations at this activity. Shops 11/25 are responsible for all metal work performed in the repair, testing, or construction of metal sonar domes at this activity. Shop 11 is responsible for the appropriate storage, disposal, or delivery to Supply Department of all metal sonar domes removed from ships at this activity.

Shop 11 is responsible for the repair and installation of all fire brick or other refractory lining material in galley ranges, baking ovens, or other cooking equipment on all ships requiring same at this activity.

I am responsible to insure that the miscellaneous programs that are sponsored by this activity are properly carried out within the Structural Shop in accordance with

current shipyard policy, directives and other instructions. Such programs as: Blood Donors, Solicitation and Collections, Purchasing and Distribution of Government Bonds, Beneficial Suggestions, Incentive Awards, Conservation, Etc.

I am responsible to participate, as assigned by higher authority, as a panel member of the Examining Board for the competitive promotions for the positions of Master and Foreman and for top level IVB positions. I am requested to participate in or designate an alternate for examinations for lower level supervisory positions within the shop, and for lower level IVB positions.

I am responsible to participate, as assigned, on various panels and committees in connection with top level formulation and implementation of shipyard policy, overall objectives, methods and procedures, safety, etc.

2. (a) Nature of Technical and Administrative Supervision

I normally report to Captain J. E. Flynn, Production Officer, Boston Naval Shipyard, a naval officer, from whom I receive only general administrative supervision as on matters of policy and overall objectives in relation to safety, personnel, good housekeeping, forced trends in workload, and general performance and economy. I receive no technical supervision. Generally, I am free to perform my duties according to my best and considered judgment, and I am required to accept this responsibility by taking the initiative for all work performed by shops 11/26 personnel.

The Production Officer occupies a billet of limited tenure as distinct from the position of Master Shipfitter, the occupancy of which is permanent in character and through which continuity of policy and practice is exercised.

(b) Contact

I meet at least once monthly with Shipyard Commanders at Shipyard Commander's Monthly Conference with Department Heads and key civilian personnel. Shipyard Commander discusses matters of policy and overall objec-

tives of shipyard in any and all phases as selected by him, and invites any comment, constructive criticism and advice from the personnel in attendance that may assist him in making his decisions.

I meet with Production Officer weekly at Production Officer's Meeting with Production Department Division Heads and Shop Masters or designated representatives. This meeting is restricted to matters of general policy, including administrative, personnel safety, good house-keeping, broad trends in overall workload, and general performance of the Production Department with respect to timeliness, quality, proficiency, and economy. The Production Officer invites any comment, constructive criticism and advice from the personnel in attendance that may assist him in making his decisions.

I attend or send a designated representative to the Repair Superintendent's weekly meeting with responsible representatives from each Production Shop, Assistant Repair Superintendents, and key personnel from Production Analysis Division. This meeting is held to discuss and resolve the status of work in process on ships at this activity, including planning and design requirements, material shortages and requirements, manning problems, and other problems affecting Production Department Commitments.

I meet several times weekly with all other Masters and Foremen, Chief and Assistant Chief Planners and Estimators, Head of Material Laboratory and Safety Superintendent for the purpose of resolving and interpreting questions of policy, coordination of work, resolving problems tending to have an adverse effect on scheduled commitments, and resolving problems in any other area that may have any adverse effect on the mission of this activity.

I hold meetings as required, with union representatives and representatives of other recognized employee groups to adjudicate problems of trade jurisdiction, working hours, leave, promotion procedures, safe practices, extra pay assignments, etc. I endeavor to settle any grievances or complaints, within existing policies and directions, at my level. Matters that require a change in existing policies I refer to higher authority via the Production Officer.

I am in personal contact several times daily with top level supervisory employees of the shipyard, particularly with the Production Officer, Department Heads, Shop Masters, Repair Superintendent, Division Heads, Ship's Officers, Chief and Assistant Chiefs, Planner and Estimator, and others for the purpose of resolving problems and coordinating the work of shops 11/26 and requesting or providing information concerning work for which shops 11/26 have responsibility and cognizance of or are associated with. *I have full authority to make firm commitments for the work of shops 11/26*, as required in these daily contacts. I must have the ability to express my ideas clearly and possess sufficient tact to convince those with whom I communicate, of the possible results of their proposed actions. I am required to possess the ability to promote improved relationships among groups and individuals.

(c) Experimental and Non-Standard Work

Continuous improvements in armament, electronics, nuclear power, hull design, etc., make my position more complex from a technical point of view. These new installations present novel and unusual problems. Examples of new types of equipment include guided missile launching and control systems, ships stabilizer systems, plastic fabrication, special alloy metals, aluminum tripod and quad-reped masts, 175" sonar dome, and the prototype LST 1173 recently completed. I am responsible to initiate action to resolve the problems created by such projects so as to enable the work of shops 11/26, in connection with them, to be expeditiously and economically accomplished within the allotted schedule commitments of this activity.

Projects of the nature described above presently account for about ten percent of the work performed by shops 11/26, however, this percentage has a tendency to steadily increase. This increase in non-standard & experimental work performed is a logical result of the rapid strides that are being made in the development of new materials,

methods, designs, etc. in all technological and scientific areas.

(d) Description of Physical Plant

I am responsible for initiating action concerning the procurement, maintenance, security, repair, survey, scrapping, and disposal of all shop 11/26 productive tools and equipment, consistent with meeting the assigned work of the Structural Shop & the commitments of this activity.

The equipment now in the custody of Shop 11 was purchased at the original cost, approximately \$1,538,700.00 dollars.

The equipment now in the custody of Shop 26 was purchased at the original cost of \$609,300.00 dollars.

The combined original cost of machinery and equipment now in the custody of shops 11/26 is approximately \$2,148,000.00 dollars. The estimated replacement cost today would come to approximately twice the original cost. The above total does not include any estimate for the value of Mechanical Office equipment, furniture or fixtures in the custody of shops 11/26.

The combined estimated cost of buildings in the custody of shops 11/26 is approximately \$2,921,200.00. The type, size, location and designation of these buildings is as enumerated below.

Designation	Type of Bldg.	Floor Area	Location
Bldg. 104.....	Brick	128,000 Sq. Ft.	Boston Naval Shipyd.
Bldg. 195.....	Brick	95,000 Sq. Ft.	"
Bldg. 16.....	Brick	7,500 Sq. Ft.	So. Boston Annex
Bldg. 211.....	Wood frame	250 Sq. Ft.	Boston Naval Shipyd.
Shipways #2....	Concrete	2,620 Sq. Ft.	"
		<hr/> 233,370	

The above does not include the outside area extending (8) eight feet from the boundaries of buildings assigned to the structural shop for which this shop is fully responsible, nor does it include outside open storage areas totaling approximately 25,000 sq. ft.

The combined estimated budget total for the operation

of shops 11/26 for the fiscal year July 1, 1956 to June 30, 1957 is as enumerated below.

Shop 11.....	\$ 782,932
Shop 28.....	547,369
Total.....	<u>\$1,330,301</u>

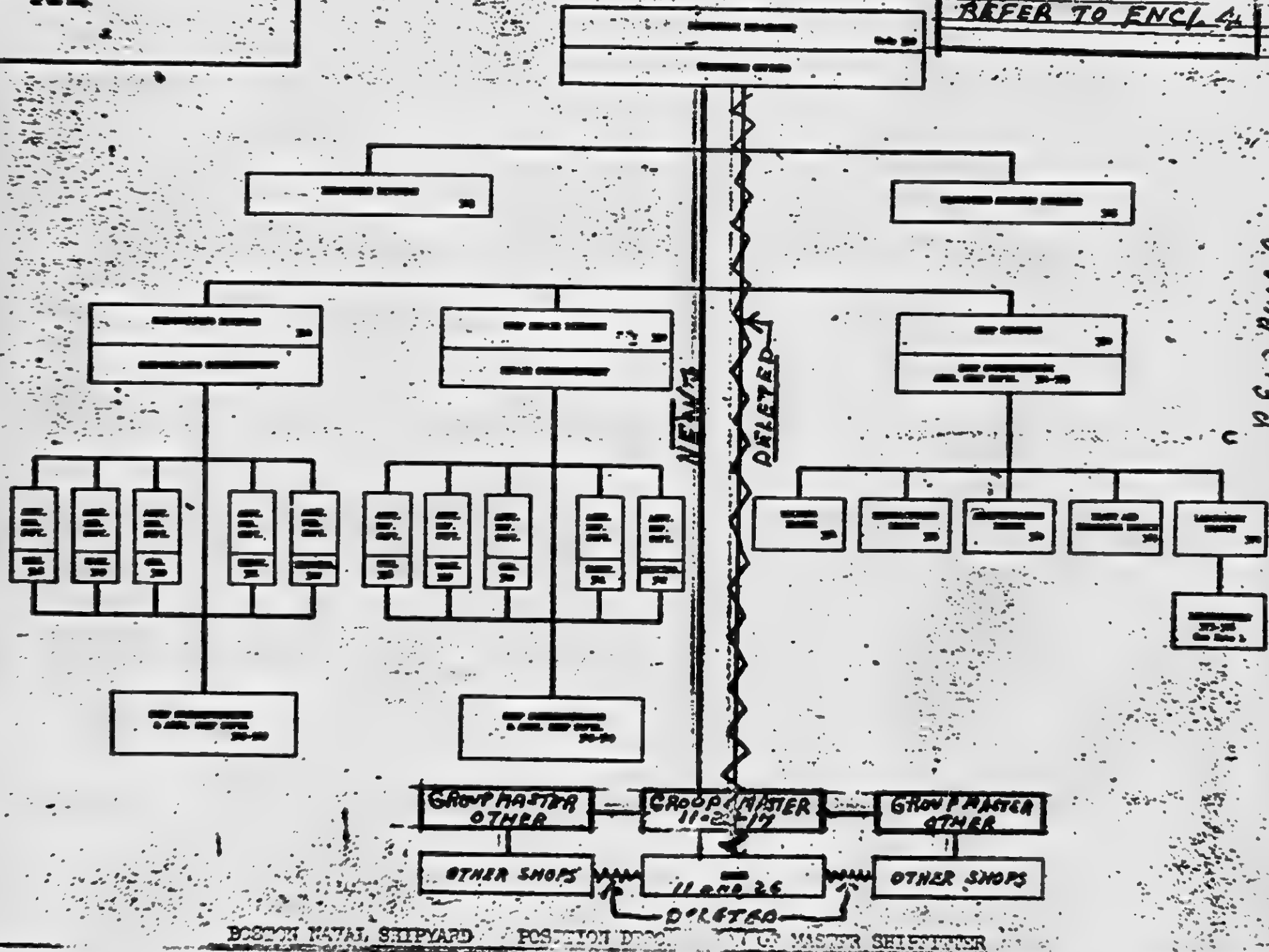
The Structural Shop processed approximately three thousand (3000) tons of various metal and metal alloy plates and shapes, varied types of welding electrodes, template wood, template paper, varied types of plastic, rivets, etc. in the performance of its assigned work. I am responsible to insure the safe custody, security, economical usage, storage and preservation, segregation of waste by type of metal, proper identification while in process, etc. from the time this material is delivered to the Structural Shop until the end use, disposal, delivery or installation. The foregoing tonnage estimate does not include the large numbers of items that are frequently delivered to the Structural Shop as finished items for installation by the Structural Shop such as: doors, hatches, scuttles, manholes, airports, hawse pipe and other metal casting, ready service ammunition boxes, ladders, and other misc. hull fittings, and appurtenances.

(e) Features Differing from Typical Position

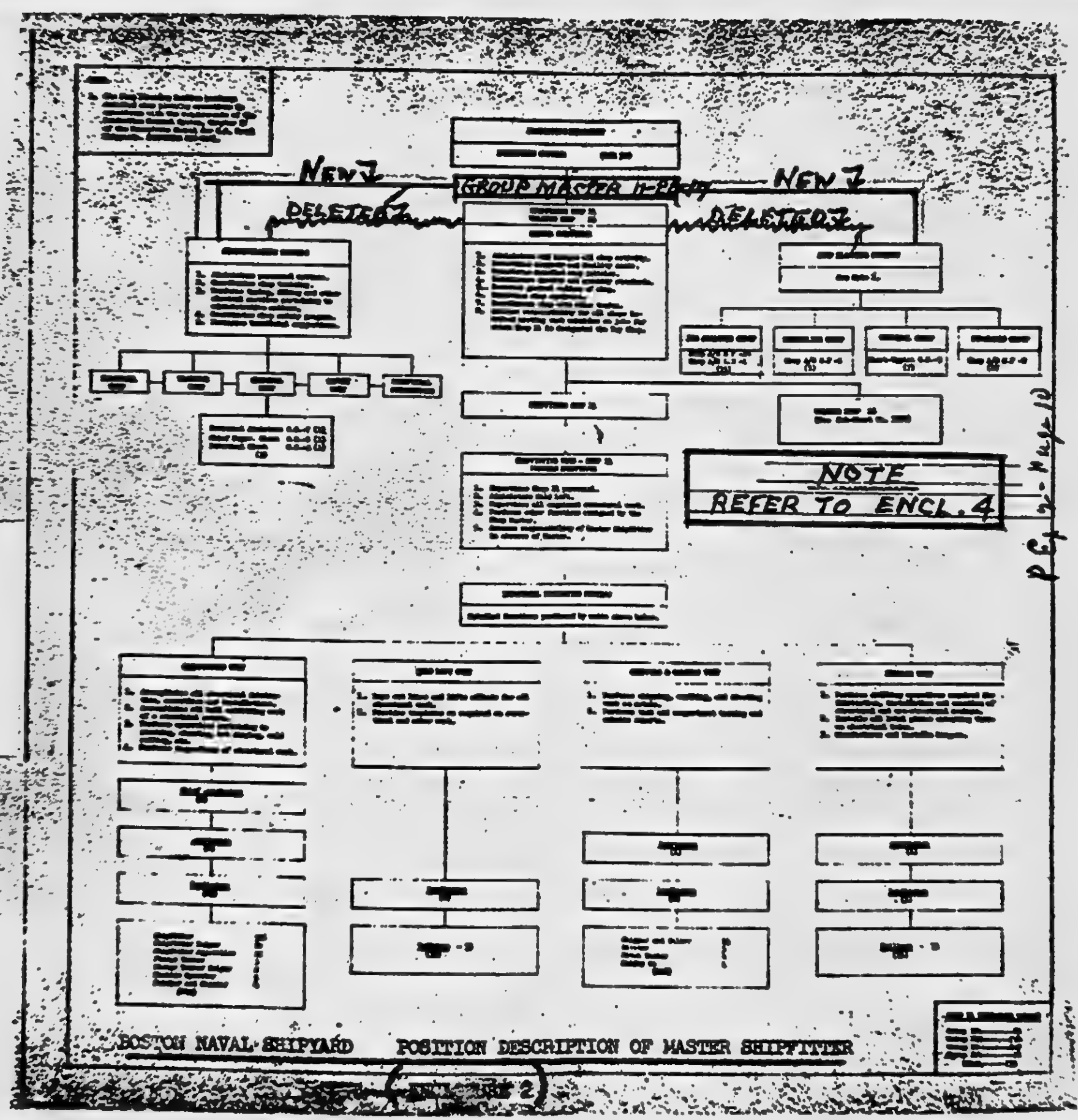
Structural shop employees are required to provide services for, work in coordination with, and to perform work for all Production Department Shops, Public Works Department Shops, and for all other shipyard departments as required. For instance, all [Copy illegible].

Information contained in this document is unclassified, except where noted otherwise. The information is exempt from automatic downgrading and declassification.

NOTE
REFER TO ENCL 4



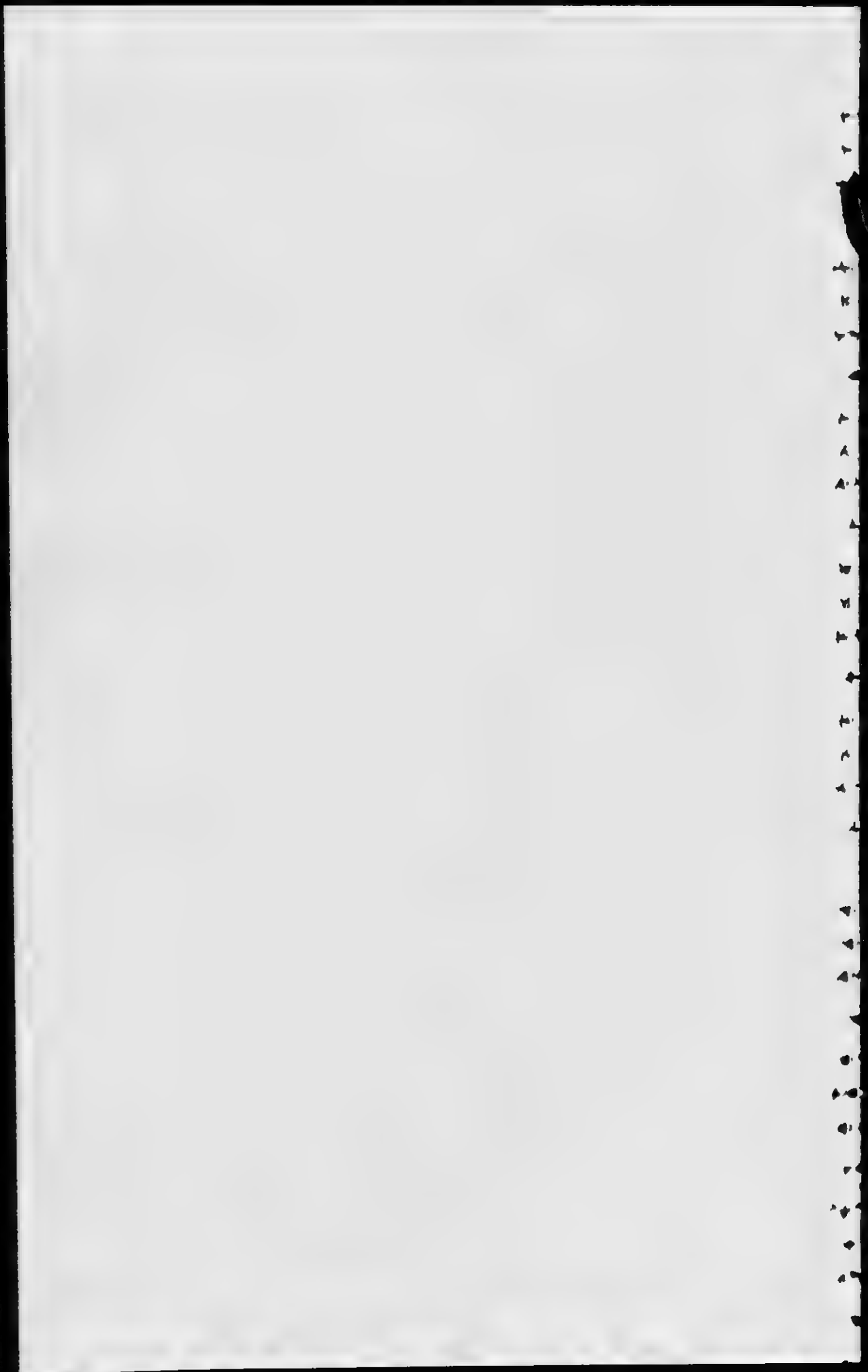
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(Enclosure 4)

1. The lines of organization or communication, *as shown in red on Enclosures 1, 2 & 3*, are those that have been shown to me on proposed organizational charts or are an accurate reflection of changes that have already taken place, and are an accurate reflection of the application of the practical, everyday, working relationships between the various positions shown on Enclosures 1, 2 & 3 since the Shop Grouping Program was placed in effect on 1 February 1961.

2. *The personnel of Shops 11/26, as of 1 February 1961, by trade and ratings is as listed below by Shop:*

Shop 11	
Master Shipfitter.....	1
Foreman Shipfitter.....	1
Chf. Qtrmn. Shipfitter.....	2
Qtrmn. Shipfitter.....	8
Ldgmn. Shipfitter.....	29
Qtrmn. Chipper & Caulker.....	1
Ldgmn. Chipper & Caulker.....	9
Qtrmn. Driller.....	1
Ldgmn. Driller.....	6
Ldgmn. Loftman.....	3
Total.....	61
Shop Planners.....	8
Shipfitters.....	390
Helper Shipfitters.....	74
Shipfitter Limited.....	25
Apprentice Shipfitters.....	15
Loftmen.....	45
Chippers & Caulkers.....	120
Drillers.....	75
Flange Turners.....	5
Helper Flange Turners.....	2
Riveters.....	3
Rivet Heaters.....	1
Machine Operators.....	2
Punchers & Shearers.....	3
High Lift Truck Operators.....	2
Total.....	770
Clerks.....	5
Total Shop 11 Force.....	836
Loans—Shop 41.....	16
Grand Total Shop 11 Force.....	852

Shop 26

Foreman Welder.....	1
Quarterman Welders.....	5
Ldgmn. Welders.....	25
Quarterman Flame Cutters.....	1
Ldgmn. Flame Cutters.....	6
Total.....	38
Electric Welders.....	2
Shop Planners.....	4
Welders.....	387
Welders Limited.....	4
Flame Cutters.....	78
Apprentice Comb. Welders.....	10
Total.....	485
Clerks.....	4
Total Shop 26 Force.....	527

Combined Shops 11/26 Total—1379

This enclosure added to original to show size, complexity, and diversification of shops 11-26 as of 1 Feb. 61.

Note that the number of supervision alone is approx. equal to 25% of shop 17's entire force of 410.

PLAINTIFFS' EXHIBIT 3

BOSTON NAVAL SHIPYARD

BNSNOTE 12000
155-37

24 Feb. 1961

BOSNAVSHIPYD NOTICE 12000

Subj: Ungraded Maintenance Review

Ref. (a) BOSNAVSHIPYDINST 12000.7B of 13 Feb. 1961

Encl: (1) List of authorized shipyard ratings and sources
of rating definitions

(2) Ungraded Maintenance Review Schedule

1. *Purpose.* To issue enclosures (1) and (2) in accordance with reference (a).

2. *Information.* Enclosure (2) of reference (a) contains the procedures for conducting subject review. Preparatory Step No. 2 is amended to the extent that "Reviewers" should review pertinent rating definitions and be prepared to discuss their accuracy and completeness prior to Execution Step No. 1. Additionally, a detailed schedule for conducting the review in each organizational component shall be arranged one (1) week prior to the beginning date of the review. Rating definitions should be reproduced, as necessary, to permit distribution to all Group IVa employees and graded "Reviewers."

3. *Action.* The report of the maintenance review shall be submitted to the Director of Industrial Relations not later than 10 days after the respective completion dates set forth in enclosure (2).

4. *Cancellation.* This notice is cancelled on 31 May 1961.

W. A. BROCKETT.

Distribution: A, AS, AT, B, D2

Remove from Bulletin Bds on 31 May 1961

BNSNote 12000
155
24 Feb. 1961

Enclosure (1)

LISTING OF GUIDELINE DEFINITIONS AND SOURCES OF DEFINITIONS

Group II		Source of Definition
Rating		
Apprentice.....		BNS NO. 1
Elevator Operator.....		NAVEXOS P-1005-369 (4/55)
Hammer Runner (Heavy).....		BNS NO. 2
Hectograph Operator.....		BNS NO. 3
Helper.....		NAVEXOS P-1005-231
Helper (General).....		NAVEXOS P-1005-232
Holder On.....		NAVEXOS P-1005-136
Laborer.....		NAVEXOS P-1005-233
Laborer (Cleaner).....		NAVEXOS P-1005-234
Laborer (Heavy).....		NAVEXOS P-1005-235 (12/57)
Oiler.....		NAVEXOS P-1005-038
Rivet Heater.....		NAVEXOS P-1005-137
Stevedore.....		NAVEXOS P-1005-089 (5/58)
Tank Cleaner.....		NAVEXOS P-1005-460 (12/57)
Warehouseman.....		NAVEXOS P-1005-352 (2/57)
Group III		
Armature Winder.....		NAVEXOS P-1005-139
Asphalt or Cement Worker.....		NAVEXOS P-1005-020 (12/57)
Automotive Equipment Operator.....		NAVEXOS P-1005-093
Automotive Mechanic.....		NAVEXOS P-1005-216 (3/60)
Blacksmith (Heavy Fires).....		BNS NO. 4
Blacksmith (Other Fires).....		BNS NO. 5
Blocker and Bracer.....		NAVEXOS P-1005-051
Boatbuilder.....		NAVEXOS P-1005-140
Boilermaker.....		NAVEXOS P-1005-176
Brakeman.....		NAVEXOS P-1005-108
Bridge Crane Operator.....		NAVEXOS P-1005-004 (4/56)
Bridge Crane Operator (Heavy).....		NAVEXOS P-1005-003 (4/56)
Buffer and Polisher.....		NAVEXOS P-1005-177
Temperer.....		BNS NO. 27
Tile and Plate Setter.....		NAVEXOS P-1005-101
Toolmaker.....		NAVEXOS P-1005-119
Toolroom Attendant.....		NAVEXOS P-1005-371 (7/55)
Toolroom Mechanic.....		NAVEXOS P-1005-163 (7/55)
Truck Driver.....		NAVEXOS P-1005-168 (11/59)
Truck Driver (Heavy).....		NAVEXOS P-1005-169 (11/59)
Truck Driver (Heavy Trailer).....		NAVEXOS P-1005-170 (11/59)

Rating	Source of Definition
Upholsterer.....	NAVEXOS P-1005-164
Water Tender.....	BNS NO. 28
Welder.....	NAVEXOS P-1005-472 (5/59)
Welder (Electric).....	NAVEXOS P-1005-246
Wharfbuilder.....	NAVEXOS P-1005-165
Group IVa	
Associate Supervisory Inspector.....	NAVESOX P-1005-375 (4/57)
Chief Pilot.....	NAVEXOS P-1005-544 (11/59)
Chief Quarterman.....	NAVEXOS P-1005-571 (12/59)
Chief Quarterman (Fuel Operations).....	NAVEXOS P-1005-370 (10/59)
Foreman.....	Ungraded job description prepared in accordance with OIRNOTE 12250 of 26 June 1957
Head Multilith Operator.....	BNS NO. 31 (NAVEXOS P-1005)
Head Photocopying Equipment Operator....	BNS NO. 31 (NAVEXOS P-1005)
Head Photolithographer (Line).....	BNS NO. 31 (NAVEXOS P-1005)
Head.....	NAVEXOS P-1005-571 (12/59)
Leadingman.....	NAVEXOS P-1005-571 (12/59)
Leadingman Photocopying Equip. Operator..	BNS NO. 33 (NAVEXOS P-1005)
Leadingman Stockman.....	NAVEXOS P-1005-350 (12/57)
Master.....	Ungraded job description prepared in accordance with OIRNOTE 12250 of 26 June 1957
Pilot.....	
	NAVEXOS P-1005-544 (11/59)

BOSTON NAVAL SHIPYARD

BNSNote 12000
155-95

15 May 1961

BOSNAVSHIPYD Notice 12000

Subj: Ungraded Maintenance Review (BNSNote 12000
of 24 Feb. 1961); Ch. No. 1.

1. *Purpose.* To amend enclosure (1) of subject Notice.
2. *Action.* Pen and ink changes should be made in enclosure (1) of subject Notice to reflect the following:

Page 5—**DELETE:** the sources of definitions of the Foreman and Master ratings listed under "GROUP IVa."

ADD: the word "Mechanic" after Foreman and Master.

INSERT: "NAVEXOS P-1005-595" as the source of definition of the Foreman Mechanic rating

INSERT: "NAVEXOS P-1005-596" as the source of definition of the Master Mechanic rating.

3. *Cancellation.* This Notice is cancelled on 31 May 1961.

J. J. FLACHSENHAR,
Acting—.

Distribution: A, AS, AT, D2.

BOSTON NAVAL SHIPYARD

BNSNote 12000
155-92

20 May 1963

BOSNAVSHIPYD NOTICE 12000

Subj: Ungraded Maintenance Review

Ref: (a) BOSNAVSHIPYD^{INST} 12000.7B of 13 Feb. 1961Encl: (1) List of authorized Shipyard ratings and sources
of rating definitions

(2) Ungraded Maintenance Review Schedule

1. *Purpose.* To issue enclosures (1) and (2) in accordance with reference (a).2. *Information.* Enclosure (2) sets forth the time schedule to be followed in conducting subject review. Enclosure (2) of reference (a) contains the prescribed procedures.3. *Cancellation.* This notice is cancelled on 21 June 1963.

F. C. JONES.

Distribution: A-AS2, AS4, AT, B.

Remove from Bulletin Bds. on 21 June 1963.

BNSNote 12000

20 May 1963

LISTING OF GUIDELINE DEFINITIONS AND SOURCES OF DEFINITIONS

Nonsupervisory

Rating	Source of Definition
Apprentice.....	BNS-1
Armature Winder.....	NAVEXOS P-1005-139
Asphalt or Cement Worker.....	NAVEXOS P-1005-020 (12/57)
Automotive Equipment Operator.....	NAVEXOS P-1005-093
Automotive Mechanic.....	NAVEXOS P-1005-216 (3/60)
Blacksmith (Heavy Fires).....	NAVEXOS P-1005-607 (12/61)
Blacksmith (Other Fires).....	NAVEXOS P-1005-607 (12/61)
Blocker and Bracer.....	NAVEXOS P-1005-051
Boatbuilder.....	NAVEXOS P-1005-140
Boilermaker.....	NAVEXOS P-1005-176
Boiler Tender.....	NAVEXOS P-1005-590 (4/61)
Boiler Tender (High Pressure).....	NAVEXOS P-1005-591 (4/61)
Brakeman.....	NAVEXOS P-1005-108
Branding Machine Operator.....	NAVEXOS 4543, JD No. 28(62)
Bridge Crane Operator.....	NAVEXOS P-1005-004 (4/56)
Bridge Crane Operator (Heavy).....	NAVEXOS P-1005-003 (4/56)
Buffer and Polisher.....	NAVEXOS P-1005-177
Calker and Chipper (Iron).....	NAVEXOS P-1005-034
Calker (Wood).....	NAVEXOS P-1005-180
Carpenter.....	NAVEXOS P-1005-198
Cement Finisher.....	NAVEXOS P-1005-181
Chain Maker.....	NAVEXOS P-1005-112
Coppersmith.....	NAVEXOS P-1005-183
Die Sinker.....	NAVEXOS P-1005-113
Diver.....	NAVEXOS P-1005-218
Driller.....	NAVEXOS P-1005-029
Electric Clock Repairer.....	NAVEXOS P-1005-064
Electrician.....	NAVEXOS P-1005-145
Electrician (Power Plant).....	NAVEXOS P-1005-148
Electronics Mechanic.....	NAVEXOS P-1005-490 (9/58)
Electronics Mechanic (Shipboard Systems)...	NAVEXOS 3473, JD No. 24(61)
Electroplater.....	NAVEXOS P-1005-199
Elevator Mechanic.....	NAVEXOS P-1005-200
Elevator Operator.....	NAVEXOS P-1005-369 (4/55)
Engineman (Hoisting and Portable).....	NAVEXOS P-1005-005 (2/57)
Engineman (Locomotive).....	NAVEXOS P-1005-109
Fabric Worker.....	NAVEXOS P-1005-141 (6/60)
Fire Control Mechanic.....	NAVEXOS P-1005-542 (11/59)
Flame Cutter.....	NAVEXOS P-1005-150 (7/58)
Flange Turner.....	NAVEXOS P-1005-032

Nonsupervisory

Rating	Source of Definition
Forger (Drop).....	NAVEXOS P-1005-609 (12/61)
Forger (Heavy).....	NAVEXOS P-1005-608 (12/61)
Forger (Light).....	NAVEXOS P-1005-608 (12/61)
Forging Machine Operator.....	NAVEXOS P-1005-583 (6/60)
Foundry Chipper.....	NAVEXOS P-1005-031
Furnaceman.....	NAVEXOS P-1005-619 (12/62)
Gardener.....	NAVEXOS P-1005-123
Gas Detection Monitor.....	NAVEXOS P-1005-588 (6/60)
Gas Plant Operator.....	NAVEXOS P-1005-598 (5/61)
Glazier.....	NAVEXOS P-1005-069
Gyrocompass Mechanic.....	NAVEXOS P-1005-088
Hammer Runner (Heavy).....	BNS-2
Heat Treater.....	NAVEXOS P-1005-024
Heavy Duty Equipment Mechanic.....	NAVEXOS P-1005-220 (3/60)
Hectograph Operator.....	BNS-3
Helper.....	NAVEXOS P-1005-231
Helper (General).....	NAVEXOS P-1005-232
High Lift Truck Operator.....	NAVEXOS P-1005-074
Holder On.....	NAVEXOS P-1005-136
Inspector (Automotive Repair).....	NAVEXOS P-1005-281 (6/60)
Inspector (General Equipment) A.....	NAVEXOS P-1005-265 (9/54)
Inspector (Heavy Duty Equipment Repair).....	NAVEXOS P-1005-385 (6/60)
Inspector (Household Goods Shipment).....	NAVEXOS P-1005-451 (9/57)
Inspector (Metals).....	NAVEXOS P-1005-269 (9/54)
Inspector (Office Machine Repair).....	NAVEXOS P-1005-440 (3/57)
Inspector (Public Works Electrical Systems).....	NAVEXOS P-1005-277 (9/54)
Inspector (Public Works Mechanical Systems).....	NAVEXOS P-1005-278 (9/54)
Inspector (Public Works Structures).....	NAVEXOS P-1005-279 (9/54)
Inspector (Ship's Electrical Systems).....	NAVEXOS P-1005-445 (5/58)
Inspector (Ship's Hull).....	NAVEXOS P-1005-447 (5/58)
Inspector (Ship's Mechanical Systems).....	NAVEXOS P-1005-450 (5/58)
Inspector (Ship's Piping Systems).....	NAVEXOS P-1005-471 (5/58)
Instrument Mechanic (Electrical).....	NAVEXOS P-1005-577 (1/60)
Instrument Mechanic (Electronic).....	NAVEXOS P-1005-578 (1/60)
Instrument Mechanic (Mechanical).....	NAVEXOS P-1005-580 (1/60)
Instrument Mechanic (Optical).....	NAVEXOS P-1005-581 (1/60)
.	
Warehouseman.....	NAVEXOS P-1005-352 (2/57)
Welder.....	NAVEXOS P-1005-472 (5/59)
Wharfbuilder.....	NAVEXOS P-1005-165

Rating	Supervisory	Source of Definition
Associate Supervisory Inspector (General Equipment) A.....		NAVEXOS P-1005-375 (4/57)
Associate Supervisory Inspector (Metals).....		NAVEXOS P-1005-375 (4/57)
Associate Supervisory Gas Detection Monitor.....		NAVEXOS P-1005-375 (4/57)
Chief Pilot.....		NAVEXOS P-1005-544 (11/59)
Chief Quartermaster.....		NAVEXOS P-1005-571 (12/59)
Foreman.....		NAVEXOS P-1005-595 (3/61)
Head.....		NAVEXOS P-1005-571 (12/59)
Head Multilith Operator.....		NAVEXOS P-1005-603 (5/61)
Head Photocopying-Equipment Operator.....		NAVEXOS P-1005-603 (5/61)
Head Photolithographer (Halftone).....		NAVEXOS P-1005-603 (5/61)
Leadingman.....		NAVEXOS P-1005-571 (12/59)
Leadingman Photocopying-Equipment Operator.....		NAVEXOS P-1005-603 (5/61)
Master.....		NAVEXOS P-1005-596 (3/61)
Master Mechanic (Structural Group).....		NAVEXOS 4543, JD No. 1(62)
Master Mechanic (M., T. & Foundry Group).....		NAVEXOS 4543, JD No. 2(62)
Master Mechanic (Machinery Group).....		NAVEXOS 4543, JD No. 3(62)
Master Mechanic (Systems Group).....		NAVEXOS 4543, JD No. 4(62)
Master Mechanic (Service Group).....		NAVEXOS 4543, JD No. 5(62)
Pilot.....		NAVEXOS P-1005-544 (11/59)
Quartermaster.....		NAVEXOS P-1005-571 (12/59)
Supervisory Planner & Estimator.....		BNS-36
Supervisory Ship Progressman.....		NAVEXOS P-1005-381 (11/55)
Supervisory Ship Scheduler.....		NAVEXOS P-1005-380 (11/55)
Special Designators for Supervisory Ratings (General Service).....		NAVEXOS P-1005-599 (9/60)

PLAINTIFF'S EXHIBIT 4

DEPARTMENT OF THE NAVY
Office of Industrial Relations
Washington 25, D.C.

OIR 12531
(Proj. #361)
OIR 414:ajt
13 Mar 1961

OIR NOTICE 12531

From: Chief of Industrial Relations
To: All naval activities employing civilians
Subj: Definitions of Master and Foreman Ratings
Encl: (1) NAVEXOS P-1005-595, Foreman Mechanic
(2) NAVEXOS P-1005-596, Master Mechanic

1. *Purpose.* This Notice transmits the enclosures for inclusion in NAVEXOS P-1005 volumes.

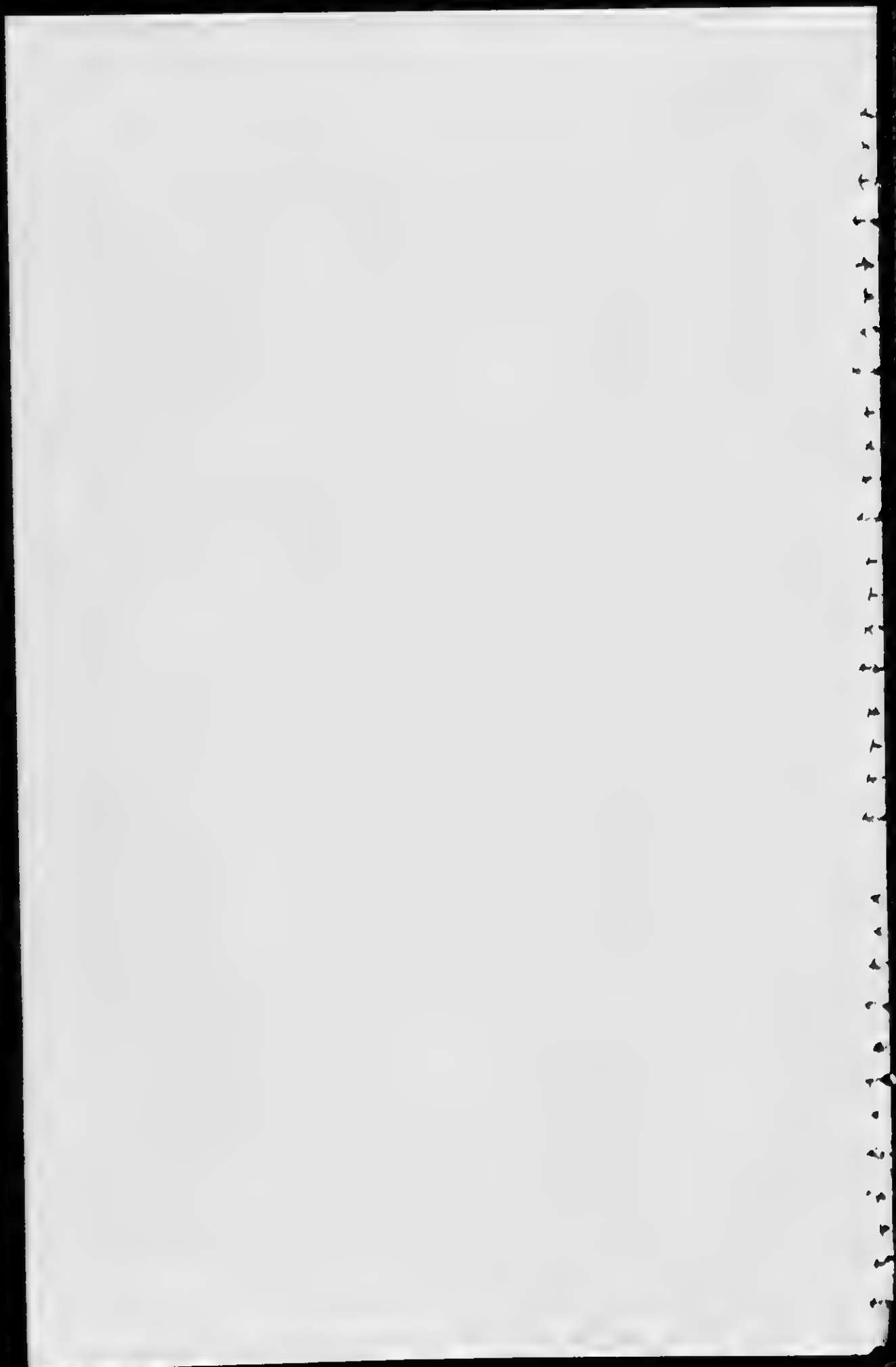
2. *Action Required.* Persons maintaining these volumes should insert the enclosures in the section for supervisory ratings in the Laborer, Helper, and Mechanic Service.

3. *Additional Copies.* The NAVEXOS P-1005 series is in the publications supply system. Additional copies of these or previously issued P-1005 definitions are available from the Naval Supply Centers, Norfolk, Virginia and Oakland, California, and the Naval Weapons Plant, Washington, D. C. P-1005 definitions should be ordered on NAV. S. AND A. FORM 1093, by complete serial numbers of the definitions (not by OIR Notice number).

4. *Cancellation.* This Notice will be considered canceled when the above information has been noted and the enclosures have been placed in NAVEXOS P-1005. For record purposes, this Notice is cancelled on 30 June 1961.

R. E. CROWN.

DISTRIBUTION: OIR Special Lists 25 and 25F (two copies to each addressee, except addressees on List E7 shall receive 10 copies and addressees on List A shall receive 5 copies), and Selected Addressees.



REDEFINITIONS OF CIVILIAN UNGRADED RATINGS NAVEXOS
P-1005-596 (3/61)

Laborer, Helper, and Mechanic Service

Group IVa

MASTER MECHANIC

Supervisory Level Summary

Master Mechanics is the highest level of ungraded supervisor within the Navy's job structure. In all cases he will be the head of a major shop or group of shops which perform related or sequential work functions. He will usually supervise a very large force through subordinate Foremen, Chief Quartermen, Quartermen, and Leadingmen.

Typical Duties and Responsibilities

Determines manpower, material, equipment, and facilities needs of shop or other subordinate groups in consideration of present and anticipated workloads. Plans the maximum accomplishment of required workload within budgetary, manpower, and materials limitations. Coordinates the work of his shop or shops with that of related or sequential shops so as to enable the completion of major job projects on schedule.

Determines work priorities and balances workload among subordinate units by appropriate distribution of work force, assignment of projects, and allotment of manpower, equipment, and materials.

Studies or reviews studies of production problems, and puts into effect improvements in operating procedures and work methods.

Consults with administrative superiors as to activity policy or higher policy of the Department of the Navy, and ensures that appropriate action is taken. Consults with planning, personnel, budget, and other staff organizations as to major work schedules, cost and budget analyses,

major personnel problems, and policies; and takes appropriate action to attain optimum production of the organization under his control.

Reviews quality and quantity of work by means of reports, discussions with subordinate supervisors, and periodic spot checks. Makes special reviews of aspects of the work which involve problems of unusual scope, cost, or public relations; and takes over personal direction of these aspects when he deems it necessary.

Acts as the top personnel authority for the organization under his cognizance, particularly in matters of performance and discipline.

Distinguishing Features

A Master Mechanic is distinguished from the next lower level of supervision by various characteristics, including the fact that control from above is largely as to administrative and policy matters; he receives no higher level trade or shop supervision; and the function, scope, and complexity of the organization he supervises are at a high level in the activity. Other characteristics usually in evidence are the presence of critical, non-standard, experimental, or other unusual work requirements and a high level or diversity of occupations supervised. For additional consideration are the extent of geographic or functional dispersion and the degree to which the work is planned, scheduled, and otherwise specified and detailed by organizations outside of the shop or by higher administrative levels.

PLAINTIFFS' EXHIBIT 5

SAN FRANCISCO NAVAL SHIPYARD
San Francisco 24, California

100-38

5450

19 February 1960

From: Commander, San Francisco Naval Shipyard
To: Chief, Bureau of Ships
Subj: Grouping of Shipyard Shops; proposal for action at
the San Francisco Naval Shipyard
Ref: (a) BUSHIPS INST 5450.94 Ser 700-12 of 8 Jan 1960
(b) Discussion between Capt. F. B. Schultz, USN,
Commander, San Francisco Naval Shipyard and
Rear Admiral R. K. James, USN, Chief, Bureau
of Ships on 5 Feb 1960

1. Reference (a) directs a program of gradual consolidation of Shipyard Shops into logical groups of approximately equal number of personnel of related trade skills. The objective of this policy is to reduce Shop overhead functions through consolidation of administrative and support services, grouping and elimination of duplicating equipment and facilities, and the achievement of better work coordination.

2. The San Francisco Naval Shipyard concurs in the objective of the Bureau's proposal and desires to gain, as soon as possible, the benefits accruing under the consolidation plan. Accordingly, the following plan, which has the support of the Shipyard Shop Masters, as well as other appropriate elements of the Shipyard command, is proposed for immediate implementation at this Shipyard, in lieu of the gradual implementation plan proposed in reference (a). This course of action received favorable endorsement in reference (b).

a. Establish five (5) Production Division Shop groupings as follows:

(1) *Structural group formed by consolidation of X-11 and X-26 [No Change was existing], with approximately 1150 men in the two shops.*

(2) Machinery group established by consolidation of X-06, X-23, X-31, X-38 and X-99, with approximately 1150 men in the group. While X-99 is indicated as being initially assigned to the Machinery Group, it is contemplated that it may be later disestablished and the various trades assigned ultimately returned to their basic Shop.

(3) Electrical group established by consolidation of X-51 and X-67, with approximately 825 men in the group.

(4) Boiler, Piping and Sheetmetal group established by consolidation of X-17, X-41 and X-56 with approximately 900 men in the group.

(5) Painting, Rigging and Woodworking group established by consolidation of X-64, X-71 and X-72 with approximately 825 men in the group.

b. Establish two (2) Public Works Division Shop Groupings as follows:

(1) Maintenance and Power group formed by combining X-03 and X-07 with approximately 315 men in the group.

(2) Transportation group consisting of the existing Transportation Shop (X-02) with 260 men in the group.

3. If the consolidation proposals made in paragraph 2, above, are approved, it is further proposed that the following plan of implementation be authorized as a means of getting the new organization underway at the earliest practical date:

a. *One Master will be designated as "Master in Charge" of each consolidated group and will be assigned direct line authority for all of the Shops in the group. However, none of the existing Shop Masters or Foremen will be reduced in rating as a result of the consolidation, and all will be permitted to retain their present rating and pay until such time as they otherwise leave the Shipyard or assume different duties elsewhere on the Shipyard. As Master positions become vacant, except for the positions of "Master in Charge", the vacancies will be eliminated or filled, as appropriate, by a Foreman or other Group IVa supervisory rating.*

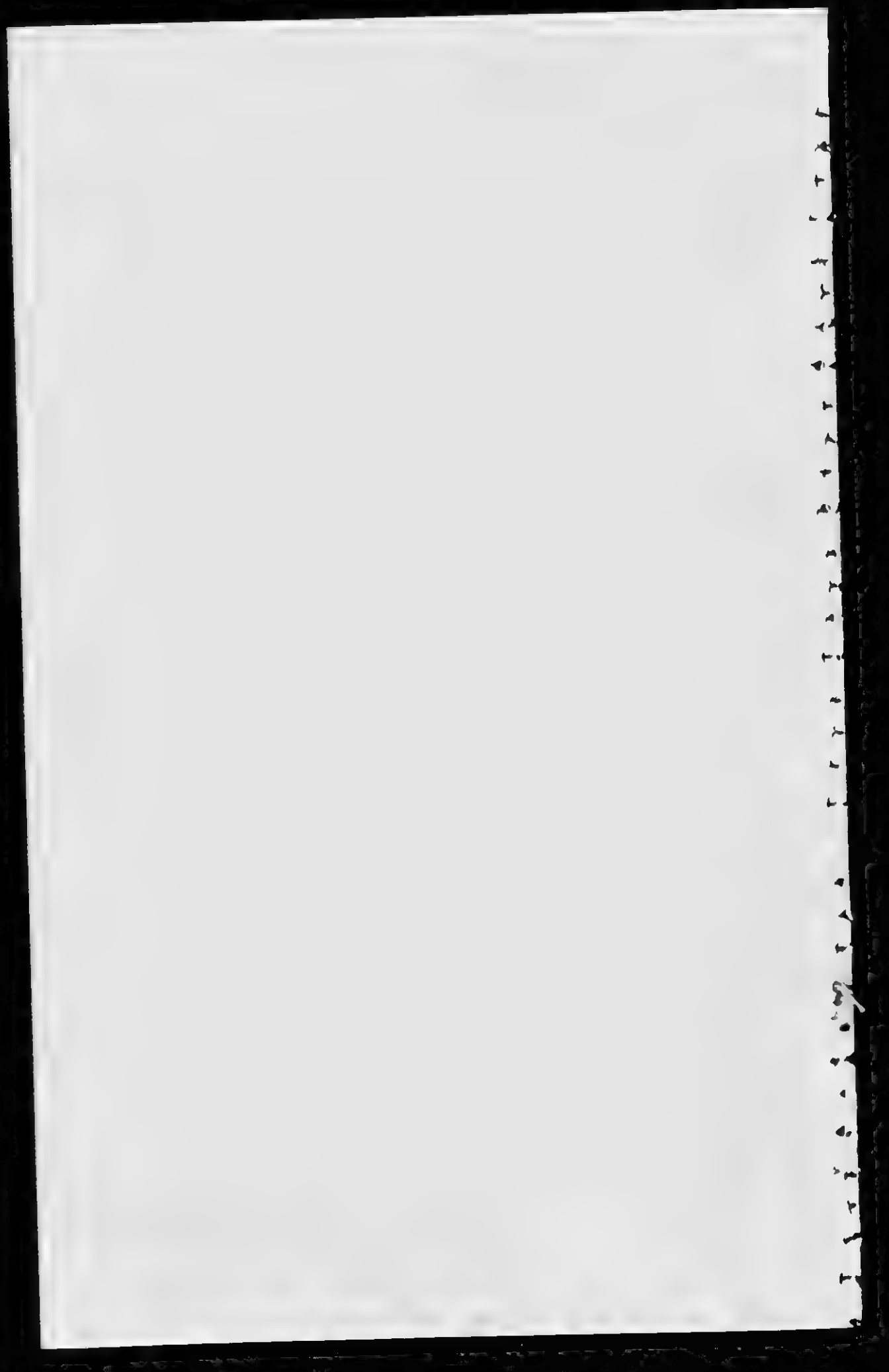
b. "Masters in Charge" will be selected by the Shipyard Commander, giving consideration to demonstrated ability, experience, seniority, etc., and other local considerations. Following designation of a "Master in Charge", efforts will then be expended to effect the desired consolidation of administrative and support personnel, reduce duplicate equipment and facilities, and improve job coordination.

4. The Commander believes that this plan will facilitate early realization of all the benefits anticipated from Shop consolidations. Accordingly, approval of the proposal outlined above is requested.

FLOYD B. SCHULTZ.

15





PLAINTIFFS' EXHIBIT 6

Copy

UNITED STATES CIVIL SERVICE COMMISSION
Washington 25, D. C.

January 29, 1960.

BAR :JOC :med

Mr. John Horan,
430 Woodbury Avenue,
Portsmouth, New Hampshire.

Dear Mr. Horan:

This is in reference to the appeal of the Portsmouth Naval Shipyard Department of the Navy, from the decision of the First Civil Service Regional Office disapproving, on procedural grounds, under Section 14 of the Veterans' Preference Act, the action of the Department in effecting your reassignment from Supervisory Accountant, GS-12, \$9050 per annum to Supervisory Accountant, GS-12, \$9050 per annum, effective March 29, 1959.

There is enclosed, for your information, a copy of the decision of the Board of Appeals and Review affirming the decision of the First Civil Service Region disapproving on procedural grounds, the action of the Department of the Navy in effecting your reassignment on March 29, 1959.

Sincerely yours,

/s/ JOHN E. BLANN,
Chairman, Board of Appeals and Review.

Enclosure No. 1254.

Copy

UNITED STATES CIVIL SERVICE COMMISSION
Washington 25, D. C.

January 29, 1960.

BAR:JGC:med

Commanding Officer,
Portsmouth Naval Shipyard,
Portsmouth, New Hampshire.

Dear Sir:

Reference is made to the appeal of the Portsmouth Naval Shipyard, Department of the Navy, from the decision of the First U.S. Civil Service Regional Office, disapproving, on procedural grounds, under Section 14 of the Veterans' Preference Act, the action of the Department in the reassignment of Mr. John M. Horan from the position of Supervisory Accountant, GS-510-12, \$9050 per annum to Supervisory Accountant, GS-510-12, \$9050 per annum, effective March 29, 1959.

The Board of Appeals and Review has carefully considered all of the evidence developed at the Regional Office, as well as the representations submitted subsequent to the decision by that office.

The official document used in effecting Mr. Horan's reassignment was a Standard Form 50. *There is no evidence that Mr. Horan was issued an advance 30-day notice.* The Form 50 indicated that Mr. Horan was reassigned from Supervisory Accountant to a position of Supervisory Accountant at the same grade and salary. He was initially Chief of the Internal Review Division, at Grade GS-12, and was reassigned as Chief, Cost Accounting Branch, a branch within the Accounting and Disbursing Division.

The Regional Office, in its decision of October 7, 1959, found that Mr. Horan's reassignment from the position of Chief, Internal Review Division, to the position of Chief, Cost Accounting Branch in the Accounting and Disbursement Division, both in the Comptroller Department, *constituted a reduction in rank*, so as to bring the action within

the purview of Section 14 of the Veterans' Preference Act of 1944. The Regional Office stated that Mr. Horan's change from a division-chief position to a branch-chief position within a division in the same department was, in its opinion, *a functional and substantial lessening in rank with relation to other supervisory positions in the area.* The Regional Office therefore concluded that Section 14 of the Veterans' Preference Act of 1944, and Part 22 of the Commission's regulations were applicable to the position change effected on March 29, 1959, and that because of the failure of the Portsmouth Naval Shipyard to follow those procedures, the action reassigning Mr. Horan was disapproved.

The Board of Appeals in its review, has concluded that the evidence *does not support the contention of the Portsmouth Naval Shipyard that the position to which Mr. Horan was reassigned is unquestionably equal in rank to the position he formerly held; nor does it support the argument advanced by the Office of Industrial Relations, Department of the Navy, in its letter of November 17, 1959, that the facts that the two positions are classified in the same series and grade is evidence that the positions are of the same rank in the organization. It is evidently true that both positions are equal in grade, but that is all. In this case, the evidence is clear and uncontroverted that Mr. Horan, organizationally, was reduced in rank. He formerly reported directly to the Comptroller and the Assistant Comptroller; whereas, now, in his new position, he reports through the Head, Accounting and Disbursing Division, which is evidence that the position to which Mr. Horan was reassigned is one of lower rank than that he formerly held.*

In view of the foregoing, the decision of the Regional Office is accordingly affirmed, and the recommendation that Mr. Horan be restored to his former position, retroactive to the effective date of his reassignment is renewed.

Under the provisions of Section 14 of the Veterans' Preference Act of 1944, as amended, compliance with Commission recommendations is mandatory, and the administrative office concerned is required to take the corrective action recommended. This letter constitutes the agency's

authority to take the recommended corrective action in the case of Mr. John M. Horan, which should be accomplished in accordance with instructions on Page B-1-36* of the Federal Personnel Manual, by cancellation of the notification of personnel action effecting Mr. Horan's reassignment. It is requested that you furnish the Board, within ten days of your receipt of this letter, duplicate copies of the official notification of personnel action, advising Mr. Horan with respect to the accomplishment of the corrective action. Your report should be addressed to the Board of Appeals and Review, U.S. Civil Service Commission, Washington 25, D. C., Attention: Miss Ruth L. Boyd, Room 231, Main Building.

For the Commissioners:

Sincerely yours,

JOHN E. BLANN,
Chairman, Board of Appeals and Review.

* Copy at this particular point illegible. Could be B-1-34, H-1-34 or R-1-34. Exact reference uncertain.

Re case of John M. Horan

Distribution:

cc: Legal Counsel, Office of Industrial Relations, Department of the Navy, Washington 25, D. C.

cc: JOHN M. HORAN, 430 Woodbury Avenue, Portsmouth, New Hampshire.

cc: First Region.

PLAINTIFF'S EXHIBIT 7

19 September 1962.

MEMORANDUM

From: Group Masters of the Long Beach Naval Shipyard
To: Group Masters of all Naval Shipyards
Subj: Classification of the Group Master's position

1. After long deliberation, we, the Group Masters of the Long Beach Naval Shipyard, feel that, if the Group Master is to be given due consideration in the management area of Naval Shipyards, with a salary commensurate with his responsibilities, then he must disassociate himself from the Master Mechanics and Foreman's Association; *since we sincerely believe, after discussing this matter with certain Bureau of Ships Officers, that subordinate Masters and/or Foremen are no longer considered "top management" personnel.*

2. We realize that this proposal will have grave deleterious effects on the future of the National Association of Master Mechanics and Foremen. On the other hand we are becoming increasingly aware of the untenable position of the Group Master, primarily because of the non-support of his position by the National Officers of the Association.

3. *The forwarded enclosure outlines our reasoning in this matter and recommends what we believe would be an equitable evaluation of our position in Naval Shipyard management.*

4. We here in Long Beach are sincere in our proposal. Endorsement by all or a majority of the Group Masters throughout the other naval shipyards would, of course, insure greater and more prompt attention from OIR. If we are unable to solicit your support, we plan to act alone.

5. Time is of essence; your comments are urged not later than 15 October 1962.

J. O. SCHAFER,
Code 901, Master Public Works Shops.
C. H. RICHARDS,
Code 920, Master Structural Group.
F. E. NEASE,
Code 930, Master Machine & Tool Group.
H. W. RICHTER,
Code 940, Master Mechanical Group.
J. J. LAMBERT,
Code 950, Master Electrical-Electronics Group.
A. O. FAIRCLOTH,
Code 970, Master Service Group.

Subsequent to shop grouping there has been an increasing deterioration in the solidarity of the National Association of Master Mechanics and Foremen, as evidenced by withdrawal of the Group Masters from the Boston Local; failure on the part of the National Conference Committee to endorse any proposal for pay differential for Group Masters; and a recognizable persona non grata attitude toward the Group Master which is developing throughout the various locals. It is understandable that these conditions would arise. *Never before, either in the Federal Service or in private industry, has an employee of equal rank and pay grade become subservient to another, on a continuing basis. The presently subordinated Master Mechanic, while complying with his Group Master's instructions, is resentful of his loss of decision-and-control prestige, and, being the underdog, is strongly supported by the foremen who are now fast becoming the majority membership of each local.*

Any reservations that shop grouping is only a temporary experiment and that we will eventually return to the former system, wherein each shop will be under a master mechanic, is doomed for oblivion; for BUSHIPS Notice 5450, Ser. 731-323 of 22 June 1962 reaffirms the policy and plans for shop grouping as outlined in the original Instruction 5450.94 of 8 January 1960.

With this declaration of continuing policy, relative to the

grouping of shops, it is reasonable and appropriate that we consider the status of the Group Master. He has been selected, presumably for demonstrated technical and administrative capabilities, and given the responsibility to develop a smooth-running, well coordinated organization of many trades; working in close cooperation with other groups. As such he now has become an administrator or superintendent, rather than a technician for a particular craft or trade.

Every group effort requires some "organization" of that effort. This organization or direction of the effort of a group may be designated as "management". The total management function has two aspects; one of these include those tasks concerned with the creation and maintenance of the organization; the other includes those tasks concerned with the operation of the organization. The first of these aspects is sometimes referred to as "management of an organization", the second as "supervision of the worker".

The concept of "management of the organization" includes such things as responsibility for establishing and modifying the structure, methods, and procedures of the organization; determining the functions of the organization; establishing policies to guide the operation of the organization; and evaluating the efficiency of the operations of the organization.

The concept of "supervision of the worker" includes the determination of what specific work is required to perform the work assignments; planning for, scheduling, and coordinating individual work assignments; assigning and reviewing work; instructing workers; inspecting work; maintaining acceptable standards of workmanship.

It is considered that the duties and responsibilities of the Group Master parallel those outlined under the concept of "management of the organization" and therefore he should be considered as a member of shipyard management, and his position changed from ungraded to graded. An appropriate classification of the Group Masters' position would be in the General Business and Industrial Series, GS-1101 with title the same as that which existed under Part IV of the old standards, namely, Production Superintendent. This

is further substantiated by Code 720's memorandum of 8 September 1961 which deleted the word "technical" from the descriptive duties of the Group Master as outlined in enclosure (1) to BUSHIPS Notice 12531, Ser. 720-2014 of 17 August 1961.

In view of the above, and in consideration of the broad scope of his responsibility, it is strongly urged that favorable consideration be given to the Classification of the Group Master's position as Production Superintendent, GS-1101-15.

19 September 1962.

PLAINTIFF'S EXHIBIT 8

I believe that it is informative as to the present Group Master's duties, and the duties of the Shop Heads, and the respective rank of the positions within the group. It is noted that this manual also uses the title Group Master. Since this chart etc. was prepared under the direction of, by order of the Group Master, and approved by the Group Master, for distribution to all supervisors, it should be an accurate reflection of the duties and responsibilities, relative rank of positions, etc, within the group, as they are now and have been, in force since the conception of Shop Grouping on 1 Feb. 1961, and it so states in the first paragraph of the preface. The wording within the boxes on the organization chart is somewhat illegible, so I have attached numbered sheets corresponding to the numbers in the boxes on the chart to show the actual wording in each box for the Group Master, Shop Head, Foreman, and Personnel and Planning positions and areas. (Pages 2-3)

1. F. J. Simon
Shop Group Master
Shops 11-17-26

Responsible to the Production Officer for the organization, administration, and supervision of Shops 11-17-26, including *all* personnel, staff functions, and facilities assigned to this group; for the performance of *all* work issued to this group by the Planning Department, and for such other work as may be assigned by the Production Officer.

2. Personnel Specialist, C. Falzone
Personnel Advisor, J. Kirby
Shop Group Administrative Branch

1) Performs staff functions for the Shop Group Master pertaining to Shop Group personnel employee relations, safety, job training, and all other authorized Industrial

Relations and Administrative Programs pertinent to Shop Group operations.

2) Coordinates and provides clerical services for the Shop Group.

3. Qtrmn., W. Smith

Shop Group Planning Branch

1) Receives and analyzes plans, work specifications, and material lists for the shop group and processes work as necessary.

2) Performs detailed planning functions as necessary.

3) Coordinates assembly of work specifications, material lists, plans, and equipment for shop group sections.

4) Maintains accountability for shop group plant account equipment and administers equipment maintenance requirements.

5) Advises the Shop Group Master and cognizant Shop Head on workload, manpower, and schedules.

4. F. J. Dugan

Shop Head, Master Shipfitter

Shipfitter Shop 11—Welding Shop 26

1) Responsible for shipfitting work including chipping, caulking, drilling, and riveting, layout and manufactured templates, testing tanks and compartments, performing installations and inspections of structural work in accordance with specifications, schedules, and manpower allocations.

2) Assumes responsibility for all shops involved in meeting work schedules on jobs for which Shop 11 or Shop 26 is designated as the Key Shop.

3) Performs special projects as assigned.

4) Coordinated inter-shop (group) projects as assigned.

5) *Assumes responsibilities of Shop Group Master in his absence.*

5.

H. C. Thompson

Shop Head, Foreman Sheetmetal

Shop 17

1) Responsible for fabrication and installation of all types of sheetmetal work in accordance with specifications, schedules, and manpower allocations.

2) Performs special projects as assigned.

3) Assumes responsibility for shop involved in meeting work schedules on jobs for which Shop 17 is designated as the Key Shop.

4) Coordinates inter-shop (group) projects as assigned.

6.

F. J. Devine

Foreman Shipfitter

1) Assists Shop Head as directed in carrying out functions of Shop 11.

2) Assumes responsibilities of the Shop Head in his absence.

7.

E. Masterson

Foreman Welder

1) Responsible for all electric and gas welding and cutting and for metal and Thiokol Spray applications in accordance with specs, schedules, and manpower allocations.

2) Assumes responsibility of Shop Head in absence of Shop Head and Foreman Shipfitter.

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Issued 8/20/62 F.J.D.

Structural Group Manual

Francis J. Dugan

August 1962.

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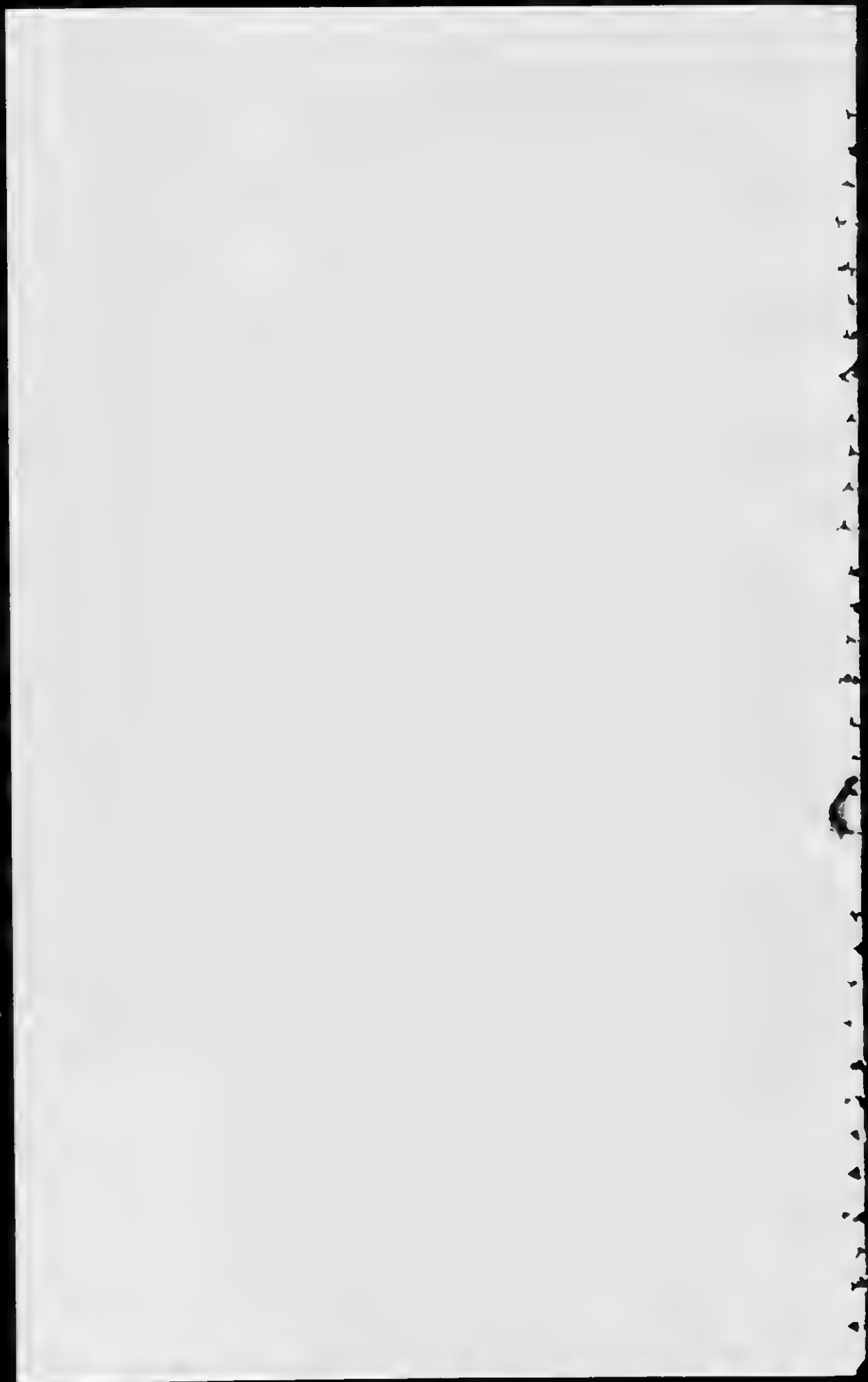
Preface

Structural Group Supervisors will find the contents of this book informative and helpful. It presents a vivid picture of the scope, purpose, and background of Shops 11, 17, and 26. *Moreover, it graphically depicts the role of each supervisor within the group organization.*

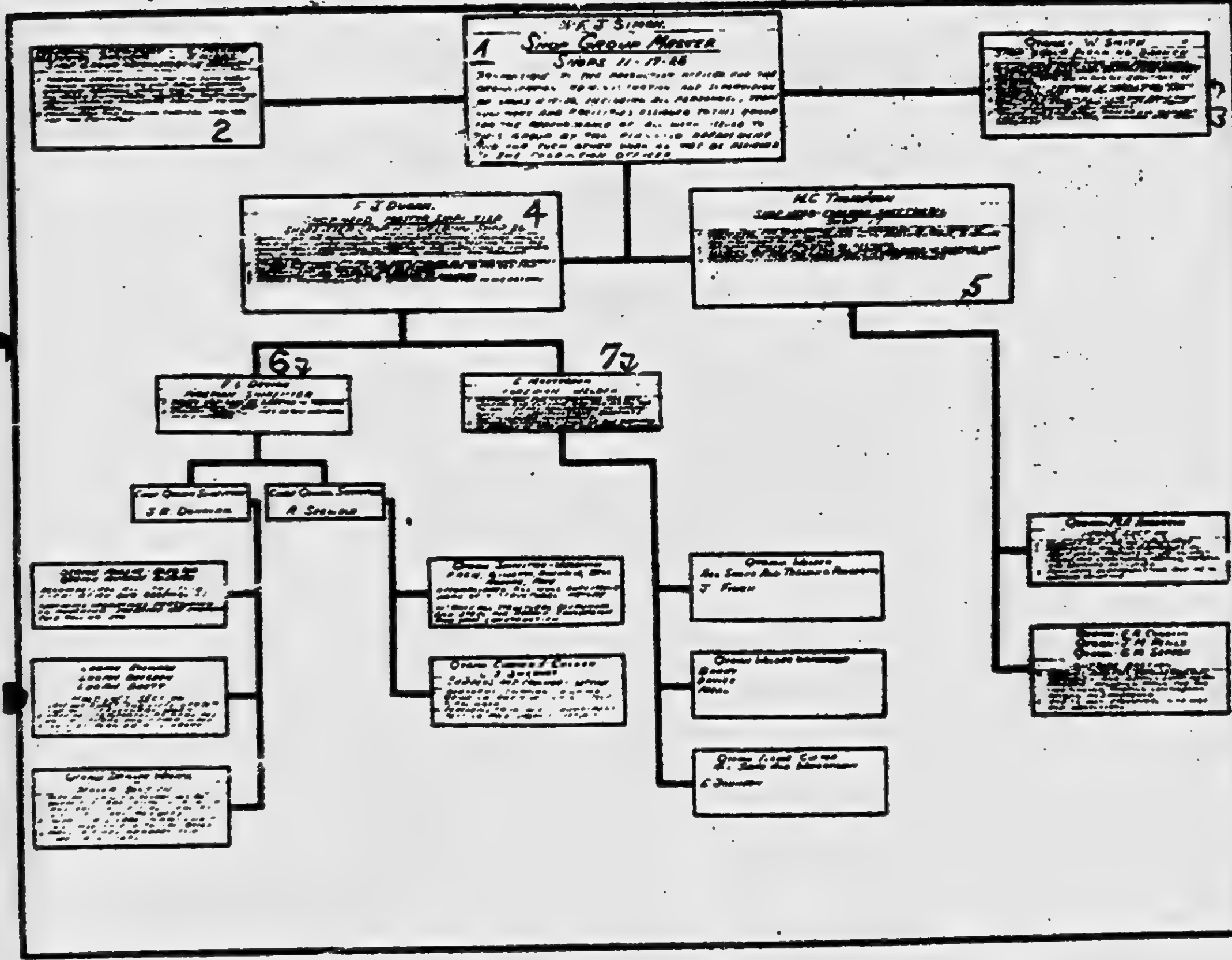
Reproduced for perusal and study is a complete list of significant forms, charts, statistical records and data which are channeled through our offices regularly. They are enclosed to acquaint you with every important phase of our operations.

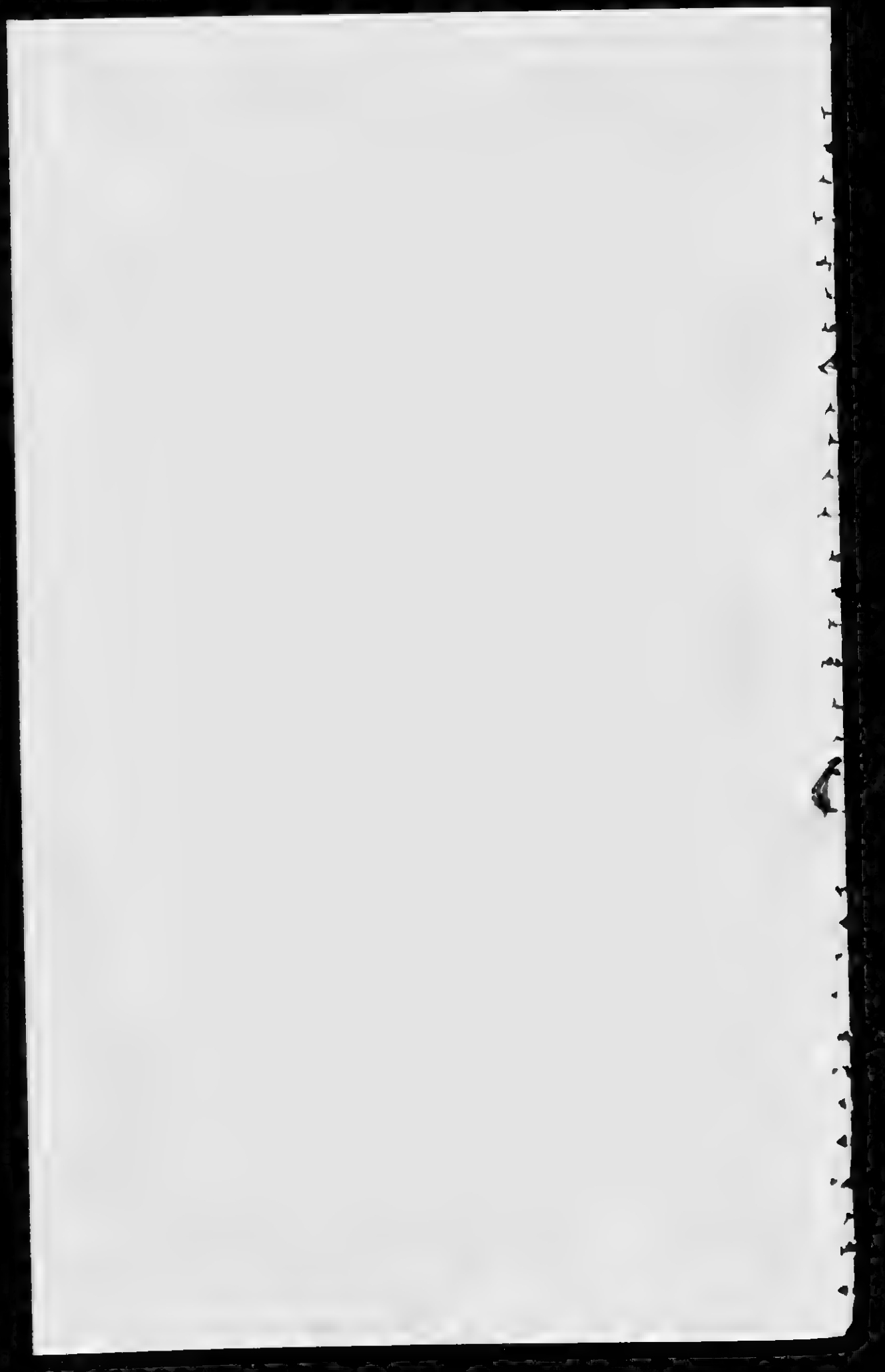
This book is offered in the hope that it will point the way to a broader understanding of ever present problems and to a more efficient means of solving them. If this goal is accomplished, we shall consider that the time and labor spent in preparing this treatise has been well applied.

I wish to acknowledge my appreciation of the valuable assistance rendered to my subordinates in the preparation of this work by Mr. Michael Nackel, Head Code 376. His cooperation has been especially valuable in connection with problems relating to data processing.



8
P 68 M 8





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This booklet has been made loose-leaf to facilitate insertion of all future pertinent memoranda.

Every supervisor is requested to read this booklet thoroughly and to forward comments, in writing, to the *Group Master* relative to improvement of this booklet. These comments are to be forwarded at your earliest convenience.

F. J. SIMON.

PLAINTIFFS' EXHIBIT 9

DEPARTMENT OF THE NAVY
Office of Industrial Relations
Washington 25, D. C.

OIR 12250
OIR 414:ajt
30 Dec 1959

OIR NOTICE 12250

From: Chief of Industrial Relations

To: All naval activities employing civilians

Subj: Definitions of Civilian Ungraded Ratings

Encl: (1) Standards for Head, Leadingman, Quarterman and Chief Quarterman ratings in the Laborer, Helper, and Mechanic Service, NAVEXOS P-1005-571 (12/59)

1. *Purpose.* This Notice transmits standards for supervisory ratings in the Laborer, Helper, and Mechanic Service. These standards are for inclusion in NAVEXOS P-1005 volumes, "Definitions of Civilian Ungraded Ratings".

2. *Discussion.* Standards for the supervisory levels of Leadingman, Quarterman, and Chief Quarterman in the Laborer, Helper, and Mechanic Service were issued by OIR Notice CP 250 of 18 June 1952. This was before the first issuance of definitions in the NAVEXOS P-1005 series; however, the supervisory standards were incorporated in the NAVEXOS P-1005 volume by subsequent checklist instruction, although they were not reprinted and reissued. The definition for Head (NAVEXOS P-1005-416 (7/56)) was issued by OIR Notice 12250 of 24 July 1956.

The enclosed standard, NAVEXOS P-1005-571 (12/59), supersedes the above mentioned standards. Although this new standard is a completely rewritten one, making a number of changes in format and language, these changes have been made principally for the purposes of improving clarity and conciseness and combining the several closely related standards into one. [It is not expected that these new standards will have any great effect in either raising or

lowering positions which were correctly rated by the superseded standards.]

3. Action Required.

a. Activities will insure that any of their employees to whom these standards apply are properly rated.

b. Persons maintaining P-1005 volumes should insert the enclosure in the section for supervisory ratings in the Laborer, Helper, and Mechanic Service. The superseded, unnumbered definitions for Leadingman, Quarterman, and Chief Quarterman should be removed from the volume. The definition for Head, NAVEXOS P-1005-416 (7/56) should also be removed.

4. Additional Copies. The NAVEXOS P-1005 series is in the publications supply system. Additional copies of the enclosed or previously issued NAVEXOS P-1005 definitions are available from the Naval Supply Centers, Norfolk, Virginia, and Oakland, California, and the Naval Weapons Plant, Washington, D. C. P-1005 definitions should be ordered on DD Form 1149, by complete serial numbers of the definitions (not by OIR Notice number).

5. Cancellation. This Notice will be considered canceled when the above actions have been taken, and for record purposes on 31 May 1960.

R. E. CRONIN.

DISTRIBUTION

OIR Special Lists 25 and 25F (two copies to each addressee, except addressees on List E7 shall receive 10 copies and addressees on List A shall receive 4 copies), and Selected Addressees.

(Handwritten figures illegible.)

Definitions of Civilian Ungraded Ratings, NAVEXOS P-1005-571 (12/59)

Performs personnel functions, such as reviewing proposed performance standards, reviewing performance ratings to insure uniformity and consistency, determining practicality of granting unusual leave requests, reviewing proposed disciplinary or commendatory actions, approving

or recommending the selection, promotion, demotion, transfer, and separation of employees, and interviewing new employees. Attempts to resolve grievances referred by subordinate supervisors, encourages and appraises beneficial suggestions of subordinates, and makes recommendations in the incentive program.

Administers the safety program in the areas under his supervisory control. Assists safety engineers to develop standards and practices specific to the particular shop.

Makes sure that necessary progress, production, cost, and other records are maintained and that reports are prepared and consolidated as required. Compiles and submits estimates for budget purposes.

Periodically inspects shop areas and field work sites to observe whether subordinates are conforming to shop directives, following safe practices, and properly using and caring for material and equipment. Directs Quartermen and Leadingmen to make any changes desired.

Additional Guides for Determining Supervisory Levels

Numbers Supervised as a Criterion for Determining Supervisory Level

The ranges of numbers of employees supervised, as indicated in these standards, are not to be regarded as completely restrictive or to be used as the sole criterion for determination of the appropriate supervisory level. Positions will not be advanced or dropped in supervisory level merely because the numbers of non-supervisory positions exceed or fall short by a few employees of a range indicated as usual for the supervisory level which would otherwise be appropriate.

On the other hand, the ratings to which those standards apply are established for the purpose of recognizing and compensating supervisory responsibilities. Both the volume and the complexity of the work for which the employee has supervisory direction and responsibility must be considered, in large measure, to be proportionate to the number of non-supervisory employees required to perform it. The trade or technical level of the basic non-supervisory

skills and knowledges required is recognized in the selection of the journeyman trade on which the supervisory level is based, and is not to be reintroduced into consideration when selecting the appropriate supervisory level.

In no case will any supervisory rating be used for a position in which actual supervisory duties and responsibilities are not a principal characteristic.

The following are some of the conditions which may require use of a supervisory level higher than that which would be typical for the number of subordinates:

(1) *Where subordinate employees are separated in several buildings or work locations, or spread over a wide geographical area;*

(2) *Where the supervisor is physically isolated from higher supervision and is required to make his own decisions on matters which would normally be discussed with higher supervisors;*

(3) *Where a variety of entirely different trades are supervised in different work operations;*

(4) *Where experimental or unusual non-standard work is supervised.*

Supervisors may have more than the typical number of subordinates where routine or repetitious work, performed in large volume, requires a great number of lower-skilled employees.

Organizational Levels

The stage or level at which supervisory control is exercised in a great many cases largely determines the applicable supervisory rating. For example, under all ordinary circumstances, the Leadingman level is considered appropriate for full first line supervision up to the limit of the span of control—that is, the number of non-supervisory workers which may be supervised effectively by one person. Therefore, although a Leadingman may or may not have Head positions under him, and neither circumstance would be considered exceptional, only under very exceptional circumstances would a Quartermen not have subordinate Leadingmen. Also, only under very exceptional circumstances

will a Chief Quartermen position exist without having subordinate Quartermen, since the Quartermen level is considered appropriate for full second level supervision up to the limit of the span of control.

However, this step-by-step process will not carry throughout an organization unless it is a very large one, even when the variable use of Head is disregarded. For example, the Chief Quartermen level may not always occur when the head of the organization is a Foreman, and the Foreman level may not occur when the head of the organization is a Master.

Head of Shop Concept

By "head of shop" or "head of organization" is meant the position which represents the highest ungraded supervisory level in the organization. Such positions report to military officers or production superintendents, engineers, or similar graded personnel. Because these heads of shops are at the highest level which directly derives from the trade field or fields in which they are engaged, they receive typically only administrative supervision and policy direction, and no trade supervision. This circumstance increases the authority and the responsibility of the job.

It must be understood that the term "shop" has no definitive meaning by itself. This same term is used to describe something as large and complex as the shipfitting shop in a shipyard and also, in other contexts, something as limited as a group of less than a dozen workers providing only routine minor maintenance and service for a housing unit.

Since the term "shop" may be applied to a unit of any size or function, no particular level can be assigned to the head of a shop. However, the circumstance of being the highest level of trade supervision does increase the authority and responsibility of a position to the point where it may be justified in being raised one level above what the same position would be if it were not the head of a shop.

The effect of this "head of shop" relationship upon the level of the rating is, of course, limited by its nature to one position in a shop or similar organization.

Filed September 6, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORT, ET AL, *Defendant*.

AFFIDAVIT OF PLAINTIFF

District of Columbia: ss:

Francis J. Dugan, after being duly sworn upon oath according to law deposes and says that he is plaintiff in the above-entitled cause and makes affidavit for use in opposing Defendants' Motion for Summary Judgment and attaches thereto certain exhibits, and recites therein certain regulations of the Navy Department the contents of which exhibits and regulations are hereby certified by plaintiff to be true and correct; and plaintiff states he has personal knowledge of and is familiar with all the matters and things hereinafter set forth, which are true and correct.

1. I am a citizen of the United States, a resident of the State of Massachusetts, and an ex-serviceman who served on active duty in the Armed Forces of the United States and was separated therefrom under honorable conditions, and am a permanent preference eligible who has completed a probationary period employed in the U. S. Civil Service under the Department of the Navy and as such am entitled to the benefits conferred by Section 14 of the Veterans' Preference Act of 1944 (5 U.S.C.A. 863).

2. The record clearly shows I experienced a reduction in rank contrary to the mandatory provisions of Section 14 of the Veterans' Preference Act of 1944 and in violation of the Personnel Instructions of the Navy Department and

the concurrent and contributing violation of Section 12 of the Veterans' Preference Act.

3. My reduction in rank was accomplished by Defendants without compliance with Section 14 of the Veterans' Preference Act. No reasons were given therefor in writing. I was not given thirty days' advance notice in writing of such proposed action, nor did I receive a statement of any and all reasons specifically and in detail for the action being proposed, and I was deprived of my right to appeal to the United States Civil Service Commission from the adverse decision of the Administrative Officer who reduced me in rank.

4. I appealed in due and regular form from said decisions, but although this action on the part of Defendant No. 1 constituted a reduction in my rank without compliance with the applicable law, I was denied the right of appeal by Defendants Nos. 2, 3, and 4. Upon the erroneous belief the action taken by Defendant No. 1 in so reducing me in rank was not within the purview of Section 14 of the Veterans' Preference Act of 1944, and under the erroneous belief that the Civil Service Commission was without jurisdiction to adjudicate my appeal, the Civil Service Commission's Board of Appeals and Review would not act on said appeal.

5. I hereby dispute statements made in Defendants' filed "Statement of Material" (alleged) "Undisputed Facts Pursuant to Local Rule 9(h)"; as follows, and indicate below in capital letters the numbered paragraphs in which such controverted facts appear in such Defendants' statement.

Defendants' Paragraph 5 states:

"FROM FEBRUARY 1, 1961, TO THE PRESENT TIME PLAINTIFF HAS CONTINUED TO BE A MASTER SHIPFITTER IN THE BOSTON NAVAL SHIPYARD, SERVING AS THE RANKING CIVILIAN OFFICIAL IN SHOPS 11 AND 26."

Concurrent with my reassignment to a Head of Shop position on 1 February 1961 by the non-standard formal adverse personnel action issued and signed by the "Shipyard Commander as a formal official letter (this letter is

fully set forth in Paragraph 4 of Defendants' statement of material facts), this letter was written to inform me of my new duties: that I was being reassigned to a "Head of Shop" position; that my new position would report to the new position of "Group Master"; that I would be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shop; that as of 1 February 1961 Mr. Simon was assigned full responsibility for overall policy, administration, and operation of Shops 11 and 26; thus the Master Shipfitter position was no longer the ranking civilian position in Shops 11 and 26.

As a result of the letter of 1 February 1961 that placed my reassignment to a "Head of Shop" position in full and immediate effect, I was concurrently reduced in organizational and reporting levels, my grade determinant, and other functions and responsibilities were transferred to the Group Master position. These foregoing factors resulted in my reduction in rank contrary to and in violation of the law as outlined in the following statements.

This reduction in rank has been further substantiated by actions of the Navy Department subsequent to 1 February 1961 and these are also referred to in the following statements.

The Navy Department implemented its shop grouping program contrary to and in violation of the Veterans' Preference Act, Sections 14 and 12, Civil Service Regulations, and its own applicable Naval Civilian Personnel Instructions. As a result of this implementation, from approximately 15 previously existing equivalent Shop Master positions in the Boston Navy Yard, 5 of these positions were laterally reassigned to the position and position title of Group Master. The Group Master positions thus were retained in their former organizational and reporting levels and, in this shipyard, assumed additional duties derived from a combining of their previous duties and duties derived from the now subordinate Master positions within the respective shop groupings.

This lateral misassignment of the Group Master position and resultant new position and position title being retained

in the previous organization and reporting levels of the previous Shop Master positions is verified by the following:

(a) It was stated Navy Department policy at the time of inception of shop grouping that reassignment to a Group Master position would not constitute a promotion for the individual reassigned. (P. Exhibit No. 1, attached) (P. Exhibit No. 1, pages 1-4)

(b) In some shipyards former Shop Masters were reassigned as Group Masters by a change of position title alone. There were no additional shops added to form the new group (P. Exhibit No. 1, pages 5-7); there were no additional duties added to the new position. They now perform the same duties and responsibilities as Group Master that they performed under their previous Shop Master title; and they remained in their previous organization and reporting levels.

It is evident then, that in accordance with Navy Department instructions and actions that the Group Master positions were not staffed by promotion; it is also evident that since the Group Masters retained, or increased, all of their previous functions, etc., that they were not reduced in any aspect. It is evident that the Group Master positions and position titles were retained in their previous levels in all aspects. It is thus established that the Group Master position was not a new level of supervision inserted between me and my former supervisor, but rather was a new position and position title, that was placed and retained in the same previously existing levels as the former position of the now Group Master position. Since the Group Master position has been retained in the organization and reporting levels of my previous position and my present position has been declared by the Navy Department¹ and the Civil Service Commission² to be subordinate to a Group Master position, it follows that I have been reduced or *downgraded* one level in the line organization and reporting levels. (P. Exhibit No. 1, page 8).

¹ Def. Ex. 1, item 28, p. 103, para. 1 and 3.

² See P. Ex. 14.

Naval Civilian Personnel Instruction 352 4-4, reads as follows:

"a. General

"When the reassignment of a veteran preference employee is proposed, the activity must determine whether the reassignment will constitute a 'reduction in rank' within the purview of Section 14 of the Veterans' Preference Act of 1944. If so, it must be treated as an adverse action and the procedures in NCPI 352.5-6 must be followed.

"b. Guidelines for determining whether a reassignment constitutes a reduction in rank.

"Neither the Veterans' Preference Act nor the Civil Service Commission's regulations specify the circumstances in which a reassignment (which involves no reduction in compensation) is a reduction in rank. Commission decisions, however, indicate that the following comparisons, between these positions from and to which reassignment is proposed, are necessary:

"(1) Organization level, particularly when supervisory positions are involved.

"(2) Levels of supervisions to which the positions report.

"(3) Promotional opportunities."

When this regulation is applied to the facts in my case, it is clear that I have experienced a reduction in rank.

The following further shows that I am not the ranking civilian in Shops 11/26 in that, prior to 1 Feb. 1961, I, as Master Shipfitter performing all of the duties and exercising all of the responsibilities as listed in the Master Shipfitter position description sheet NAVEXOS 3473, dated September 1957 (P. Exhibit No. 2), 12 pages—Position Description and Charts; was the senior civilian supervisor in the highest ranking civilian position exercising authority over the operations of Shop 11. I was a member of Shop 11 in that my identification number is on the Shop 11 series. I, as Master Shipfitter, was the senior civilian supervisor

and highest ranking civilian possessing authority over Shop 26. I was then the senior civilian supervisor with full and complete responsibility, at civilian level, for all aspects and operations of Shop 26. I was not then and am not now a member of Shop 26, in that I do not have a Shop 26 identification number. The present Group Master in his capacity as Master Sheetmetal worker was not then, and is not now, a member of either Shop 11 or Shop 26, in that he does not have a Shop 11 or Shop 26 series identification number. He is now, by formal written order of the Shipyard Commander, the Senior Civilian Supervisor in Charge of Shops 11, 17, 26; as such he is now also the highest ranking civilian possessing authority over Shops 11/26.

Since the Group Master position is now the Senior Civilian Supervisor in Charge and the highest ranking civilian position exercising complete authority over Shops 11/26, it is evident that I am now only the Senior Civilian Supervisor, exercising an undefined limited authority in Shop 11 that is also a member of Shop 11. I am not now the Senior Civilian Supervisor in Charge, and I am not now the highest ranking civilian position exercising complete authority over Shop 11. I am not now the Senior Civilian Supervisor in Charge of Shop 26, and I am not now the highest ranking civilian position exercising complete authority over Shop 26, regardless of Defendants' contentions. I am now actually the second highest senior civilian supervisor, exercising limited authority over Shop 26. I am now actually the second highest ranking civilian position that exercises an undefined limited amount of authority over Shop 26. I am actually now the second highest ranking civilian position exercising a limited authority over Shop 11. I am not now the Senior Civilian Supervisor in Charge of Shop 11 exercising my former complete responsibility for Shop 26, because the Group Master position now exercises my former authority over both Shops 11 and 26.

I am not now performing the full duties and responsibilities of the Master Shipfitter position as contained in my Position Description Sheet NAVEXOS 3473 submitted in September 1957. (P. Exhibit No. 2) The defendants

have not denied that I am no longer performing the duties of Master Shipfitter; they have merely stated that I hold the official rating of Master Shipfitter, implying that my holding the official title and pay would show that I am performing the duties. However, this is erroneous, as I am not performing such duties.

The defendant, subsequent to my reassignment to a Head of Shop position, issued a requirement for an Ungraded Maintenance Review to certify that all ungraded positions were performing the duties of the applicable rating or Position Description Sheet. As originally issued, the Ungraded Maintenance Review (P. Exhibit No. 3, pages 1-3) called for the Shipyard authorities to certify that I was performing the duties of Master Shipfitter as defined in NAVEXOS 3473 of September 1957. The Shipyard authorities did not so certify.

An amendment to the Ungraded Maintenance Review (P. Exhibit No. 3, pages 4-7) was issued to require that the Shipyard certify that I was performing the duties of an extremely general definition of Master Mechanic, and they did certify to this. Government's Exhibit No. 1, Item 15, page 42, does not certify that I am performing the official duties of the Official Master Shipfitter Position. Again it is only certifying that I am performing the official duties of the General Master Mechanic position.

I am not now, and have not been, performing the duties of the Master Mechanic position as defined in NAVEXOS P-1005-596 (3/61) (P. Exhibit No. 4, pages 1-3). The Group Master position, since 1 February 1961, is the highest civilian level of ungraded supervisor within the Navy job structure, as shown by Exhibit No. 4, and he now has the final authority in all areas, over all Shops 11/26 personnel, including the formerly independent Master Shipfitter position. The Group Master has the final authority in all areas listed in NAVEXOS P-1005-596 (3/61) (P. Exhibit No. 4), including trade and production. The Master Shipfitter position prior to 1 February 1961 had final authority in all these areas and also was the highest level of ungraded supervisor within the Navy supervisory structure.

The action that I am appealing was initiated during

November 1960 and placed in full and immediate effect on 1 February 1961. It is noted that Government's Exhibit No. 1, Item 15, page 42, is dated 14 June 1961, and that the duties of Master Mechanic described in the "Definitions of Civilian Ungraded Ratings (NAVEXOS P-1005-596 (3/61))" (P. Exhibit No. 4) was issued in March 1961, *subsequent* to the date of my reduction in rank.

The question of my performing, or not performing, the duties of the Master Mechanic position, as claimed by defendant, is not the primary issue. I am appealing my reduction in rank from the specific position of Master Shipfitter, Boston Naval Shipyard, as described in "Request for Amendment to Activity Schedule of Wages," NAVEXOS 3473 (P. Exhibit No. 2), as requested by OIR Notice 12250 of 26 June 1957. To this date the subject position description (Master Shipfitter) has not been rewritten or amended. I therefore deny, as averred in Defendants' Paragraph 5 of their statement of material fact, that I am Master Shipfitter, because I am not now performing the duties of this position and have not since February 1961.

The Defendants state that the former independent Shop Master positions "would be permitted to retain their title and pay" (P. Exhibit No. 5, page 2) if they were not re-assigned to a Group Master position. This statement is a tacit admission that the naval authorities recognized that these positions were not legally entitled to retain their former titles and pay, but would only be retained on a permissive basis. My title of Master Shipfitter has been designated by defendant for pay purposes and to enable the defendants to imply that I exercise the former duties of this position. However, I do not.

In my position of Head of Shops I was reduced in organization and reporting levels and further reduced by loss of former duties, functions, and organizational divisions of Shops 11/26 and am now organizationally comparable to individuals with the supervisory ratings of Foremen and Chief Quartermen that are now in Head Shop positions.

These Head of Shop positions that are staffed by Foreman and Chief Quartermen ratings have similar responsi-

bilities and organizational reporting levels as my present position.

The ratings of Foreman and Chief Quartermaster were clearly subordinate in all respects to my former position of Master Shipfitter, as defined in the Position Description Sheet. Thus it is apparent I have been reduced in rank.

Prior to 1 February 1961, the Master Shipfitter position, as defined in NAVEXOS 3473 of September 1957, included all the duties of a Group Master position. While I held that position, I was in complete charge of the complete shop grouping composed of Shops 11/26 and then known as "The Structural Shop." In other naval shipyards the former Master Shipfitter position was also in charge of a similar complete shop grouping of Shops 11/26 and also then known as "The Structural Shop." In these other shipyards the Master Shipfitter positions were laterally reassigned to the new position and title of Group Master. (P. Exhibit No. 1, page 5, Item 4; page 6, Items 3 and 5) They now perform the same duties as Group Master that they performed in their position of Master Shipfitter, as the former Structural Shop has been redesignated as "The Structural Group." They, as a result of the single action of a change of position title, retained their previous authority and levels in all aspects. It is evident that my current position of Head of Shops with its loss of authority, functions, levels, etc., is not equal in rank to a position that has retained all of these factors. It also is evident that as Master Shipfitter, we all occupied positions that were equal in rank in all aspects. Therefore, it is obvious that I have been reduced in rank.

The Navy Department has claimed that the additional functions, etc., now performed by the Group Master position were derived from the Military Production Officer position, in letter dated 23 February 1961, (Defendants' Exhibit No. 1, Item 6, page 13, paragraph 3) it is stated:

"Each of the 5 major groups is headed by a Group Master whose responsibilities have increased in scope by delegation of responsibilities formerly held by the Production Officer to whom they report."

From 28 March 1960 to 25 May 1962 there were no changes in the official duties of the Production Officer in the Boston Navy Shipyard. Therefore, the added responsibility of the Group Master would not have been derived from the Production Officer's position. Such additional responsibilities were derived from the former position of Master Shipfitter.

The present Group Master position exercises the same degree of authority over the Structural Group that the Master Shipfitter exercised over the former Structural Shop group. The Group Master makes now the final recommendations in all areas to the Production Officer, exactly as did the Master Shipfitter. The Production Officer has not delegated any of his previous decision making authority to the Group Master. The Group Master recommends, the Master Shipfitter recommended, and it is the Production Officer who still makes the final decision. In our current positions the Head of Shop recommends to the Group Master; the Group Master makes the final recommendation to the Production Officer, as the Master Shipfitter formerly did; the Production Officer still has all decision making authority.

A comparison of Government Exhibit No. 1, Item 28, pages 105 through 101, inclusive, with P. Exhibit No. 2) NAVEXOS 3473, Master Shipfitter, Position Description Sheet, will substantiate the statements contained in pages 110 through 106, inclusive, Government Exhibit No. 1, Item 28. This comparison also will substantiate the statements contained in Government Exhibit No. 1, pages 82 through 79, inclusive, paragraphs 16 through 17 (as listed "a" to "yy"). The statements contained in Government Exhibit No. 1, Item 1, page 3, and in Government Exhibit No. 1, Item 2, page 2, will further substantiate my loss of functions, authority, overall policy, administration, etc., to the Group Master position.

(P. Exhibit No. 7, pages 1-3), statement underlined, further substantiates the loss of functions, etc., with specific reference to "loss of decision and control" prestige.

These statements in the above exhibits are made and

endorsed by the signature of all the Group Masters of the Long Beach Naval Shipyard; that these Group Masters have been performing the actual duties of a Group Master for approximately two years; that as a result of actual performance of these duties they know and have stated what these duties are; that as a result of these duties they are now in a higher rank and status; that subordinate Shop Masters are no longer considered "top management" personnel; that never before in the Federal Service or in private industry has an employee of equal rank and grade become subservient to another on a continuing basis; that the presently subordinated Master Mechanic, while complying with his Group Master's instructions, is resentful of *his loss of decision-and-control prestige.*

These all are factual statements made by the employees who are currently filling the Group Master positions, and are their statements as to the actual duties performed, the actual rank and status of their position as actually recognized by Naval Management, the actual rank and status of a subordinate Master as recognized and in effect in their groups by Naval Management, *and certainly is vastly different from those same areas as they were and are claimed to be by BuShips to the United States Civil Service Commission.*

As further results of my loss of functions, levels, etc., that resulted in my reduction in rank, I have been subjected to a loss of status and prestige among my fellow employees in supervisory and non-supervisory positions. I have been made the butt of ridicule and had my standing in my career jeopardized as a result of the adverse action that resulted in my reduction in rank.

(P. Exhibit No. 8, page 1, with enclosures, pages 2-8) further substantiates my loss of functions, etc., in that it shows I now have only limited authority over only the actual production of Shops 11/26 as the second highest ranking senior civilian supervisor in the Structural Group.

(P. Exhibit No. 1, page 8) contains statements made by Admiral Honsinger, Mare Island Shipyard Commander, at

that shipyard, when shop grouping was implemented. Admiral Honsinger said:

"One by-product of the realignment will be the *downgrading* of some current Shop Masters . . . There are 14 masters heading Shops at Mare Island now. The new set-up will find half of them removed and placed in lesser positions."

These statements further substantiate the *downgrading* and resultant reduction in rank of my former position of Master Shipfitter!

Exhibit No. 9, pages 1-4 OIR Notice 12250, dated 30 December 1959, definition of civilian ungraded ratings, with enclosure 1, pages 7, 8, and 9, contain statements, as underlined, substantiating that in accordance with "Additional Guides for Determining Supervisory Level," I have been reduced in rank by my reassignment to a Head of Shop position. It is noted that my Head of Shop position is not the highest level in the "Structural Group" that directly derives from the trade field or fields within the "Structural Group," as stated on page 4, paragraph 2 of Exhibit 9. In my former position of Master Shipfitter I was the highest level position within the Structural Shop that derived from the trade field.

The Group Master position now exercises trade supervision over all positions within the group. Therefore, I am not now the highest ungraded supervisory level in the organization of the Structural Group that directly derives from the trade fields in which they are engaged. Exhibit No. 9, page 4, states:

"The circumstance of being the highest level of trade supervision does increase the authority and responsibility of a position."

I have now lost the increase in authority and responsibility derived from that factor to the Group Master.

6. Defendants' Paragraph 6 states:

"ON FEBRUARY 6, 1961, PLAINTIFF APPEALED TO THE FIRST CIVIL SERVICE REGION, ALLEGING THAT THE ACTION INCIDENT TO THE GROUPING OF SHOPS 11, 26, AND 17 CONSTITUTED A REDUCTION IN RANK FOR HIM IN THAT HE HAD IN EFFECT MOVED DOWN ONE LEVEL IN THE SENIOR SUPERVISORY LEVEL. HIS CONTENTION WAS BASED ON THE FACT THAT WHEREAS PRIOR TO FEBRUARY 1, 1961, HE REPORTED DIRECTLY TO THE PRODUCTION OFFICER, SUBSEQUENT THERETO HE REPORTED TO A GROUP MASTER WHO IN TURN REPORTED TO THE PRODUCTION OFFICER."

I stated in my appeal action,

"This action constitutes a reduction in rank in that I, as Master Shipfitter, have in effect moved down one level in the senior supervisory level (N.C.P.I. 352.4-4(b) 1)."

N.C.P.I. 352.4-4(b) 1 states:

"(1) Organizational level, particularly when supervisory positions are involved."

N.C.P.I. 352.4-4(b) 2 states:

"(2) Levels of supervision to which the positions report."

I further now affirm my statement made in my appeal to the Civil Service Commission that:

"I have in effect moved down one level in the senior supervisory level. (N.C.P.I. 352.4-4(b) 1)" (Organizational level)

"The level of supervision to which I now report has been lowered. (N.C.P.I. 352.4-4(b) 2)" (Reporting level)

It is thus established that my reduction in rank was based on a reduction in my organizational or senior super-

visory level and that the level of supervision to which I now report has been lowered in that I now report to the Group Master and I formerly reported to the Production Officer.

P. Exhibit No. 6 establishes that the United States Civil Service Commission has previously determined that a reduction in rank occurred, even when the positions retained the same grade but were reduced in organizational and reporting levels. The chairman, Board of Appeals and Review, stated in this letter:

"... that the facts that the two positions are classified in the same series and grade is evidence that the positions are of the same rank in the organization. It is evidently true that both positions are equal in grade, but that is all. In this case the evidence is clear and uncontroverted that Mr. Horan, organizationally, was reduced in rank. He formerly reported directly to the Comptroller and the Assistant Comptroller; whereas now, in his new position, he reports through the Head, Accounting and Disbursing Division, which is evidence the position to which Mr. Horan was reassigned is one of lower rank than that he formerly held.

"In view of the foregoing, the decision of the Regional Office is accordingly affirmed, and the recommendation that Mr. Horan be restored to his former position, retroactive to the effective date of his reassignment, is renewed."

7. Defendants' Paragraph 8 states:

"IN A DECISION DATED MAY 3, 1961, THE FIRST UNITED STATES CIVIL SERVICE REGION REVIEWED THE EVIDENCE IN DETAIL AND DETERMINED THAT PLAINTIFF'S APPEAL WAS NOT WITHIN THE PURVIEW OF SECTION 14 OF THE VETERANS' PREFERENCE ACT BECAUSE NO ADVERSE PERSONNEL ACTION HAD BEEN EFFECTED BY THE SHIPYARD WITH RESPECT TO PLAINTIFF."

The action of the Civil Service Commission was erroneous because I had been issued a personnel action by the letter of the Shipyard Commander.

N.C.P.L. 290 2-3(b) 1 states in part:

“(b) Field Service in General

“The authority to effect personnel actions for employees in the field service, except as provided in c and d below, has been delegated to:

“1. Commandants, commanders, and other commanding officers.”

Government Exhibit No. 1, Item 23, pages 65-64, paragraphs 1-4 inclusive, substantiates that a non-standard adverse personnel action was issued in the form of a formal written order to Mr. F. J. Simon and me, as a signed letter from the Shipyard Commander. This action constituted an adverse personnel action to me that resulted in my being reduced in rank.

The Veterans Preference Act states that a veteran eligible shall not be reduced in rank. Therefore, any reduction in rank of a preference eligible must be within the purview of the Veterans' Preference Act. The Act does not state that special circumstances may be deliberately created (such as lack of issuance of a formal standard personnel action) to effect a reassignment resulting in a reduction in rank, so as to evade the requirements of the Act and so deprive a preference eligible of his legal rights under the act.

8. Defendants' Paragraph 9 states:

“PLAINTIFF APPEALED TO THE CIVIL SERVICE COMMISSION'S BOARD OF APPEALS AND REVIEW WHICH BY LETTER OF OCTOBER 27, 1961, TO PLAINTIFF ADVISED HIM THAT HIS APPEAL FROM THE ORDER OF THE COMMANDER, BOSTON NAVAL SHIPYARD, DATED FEBRUARY 1, 1961, WAS NOT WITHIN THE PURVIEW OF SECTION 14 OF THE VETERANS' PREFERENCE ACT AND THAT THE CIVIL SERVICE COMMISSION DID NOT HAVE JURISDICTION TO ADJUDICATE IT. IN SO RULING THE BOARD DETERMINED THAT THE MERE CHANGE IN ORGANIZATIONAL STRUCTURE DID NOT REDUCE PLAINTIFF'S RANK AS MASTER SHIPFITTER AND RANKING AND CIVILIAN SUPERVISOR IN SHOPS 11 AND 26.

WITH RESPECT TO PLAINTIFF'S CONTENTION THAT SOME OF HIS FORMER DUTIES AND RESPONSIBILITIES HAD BEEN ASSIGNED TO THE GROUP MASTER, THE BOARD SAID:

'SO FAR AS THE RECORD SHOWS, YOUR CONTENTION IS VALID ONLY WITH RESPECT TO SUPERVISION OF CERTAIN ADMINISTRATIVE AND SUPPORT SERVICES WHICH WERE FORMERLY MAINTAINED IN EACH SHOP BUT WHICH HAVE SINCE CONSOLIDATED FOR THE SHOP GROUP UNDER SUPERVISION OF THE GROUP MASTER. IN THE OPINION OF THE BOARD SUPERVISION OVER SUCH ADMINISTRATIVE AND SUPPORT SERVICES CONSTITUTED A MINOR PART OF YOUR DUTIES AND RESPONSIBILITIES AND DID NOT HAVE ANY SIGNIFICANT EFFECT UPON THE RANK OF THE POSITION OF MASTER SHIPFITTER. * * *

'AS HAS BEEN INDICATED ABOVE, THE BOARD DOES NOT CONSIDER THAT THE CHANGES IN ORGANIZATION AND IN THE ASSIGNMENT OF DUTIES AND RESPONSIBILITIES AS THEY HAVE AFFECTED YOUR POSITION AS MASTER SHIPFITTER EVIDENCE ANY REDUCTION IN YOUR RANK. THE BOARD CANNOT, OF COURSE, ADJUDICATE THE PRESENT MATTER ON THE BASIS OF SPECULATION AS TO THE ULTIMATE OUTCOME OF THE REORGANIZATION. IN THE EVENT THAT YOUR RANK OR COMPENSATION IS REDUCED BY SOME FUTURE ADMINISTRATIVE ACTION OF YOUR EMPLOYING AGENCY, YOU WILL THEN BE ENTITLED TO EXERCISE OF A RIGHT OF APPEAL TO THE COMMISSION UNDER SECTION 14 OF THE VETERANS' PREFERENCE ACT OF 1944.'''

The contentions stated in paragraph 2 of the section are refuted in Government Exhibit 1, Item 27, pages 98 through 86 inclusive, with more specific reference to pages 89 through 86 inclusive. These 12 pages of facts are adopted herein and made a part of this affidavit by reference, but, for the purpose of conserving the record, are not copied herein.

Plaintiff contends that on 1 February 1961 Mr. Simon and the plaintiff were both qualified to be reassigned to

the new position of Group Master. Mr. Simon was obviously considered qualified in that he was so reassigned. Plaintiff was considered qualified in that Captain Grant-ham, the then Production Officer and Military Department Head, stated to plaintiff that both plaintiff and Mr. Simon had been considered qualified for the Group Master position, but that Mr. Simon had been selected, and plaintiff should not feel bad as he would undoubtedly be selected the next time the selection came up. The defendants have not denied that plaintiff is qualified and have not claimed that he is not qualified. Plaintiff further contends that the fact that Mr. Simons and plaintiff were both qualified placed them in the same competitive level; thus the reduction in force procedures. Retention preference regulations and Sections 12 and 14 of the Veterans' Preference Act should have been applied to the reassignment action which resulted in Mr. Simon's reassignment to the Group Master position. They were not. Therefore, the reassignment of Mr. Simon was contrary to the regulations and should be set aside.

Further affiant sayeth not.

/s/ FRANCIS J. DUGAN,
Plaintiff.

Subscribed and sworn to before the undersigned Notary Public this 30th day of August 1963.

/s/ EVA M. MIGONIS,
Notary Public, District of Columbia.

My Commission expires 5/31/65.

Filed September 14, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH, ET AL., *Defendants.*

MOTION FOR SUMMARY JUDGMENT

Plaintiff herein through his attorney, Warren E. Miller, respectfully moves the Court to grant Summary Judgment for plaintiff on the ground that the pleadings and the Affidavit of Plaintiff filed herein, which are attached hereto and made a part hereof, disclose that there is no genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law.

WARREN E. MILLER,
810—18th Street, N. W.,
Washington, D. C.,
Attorney for Plaintiff.

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Motion for Summary Judgment, together with Statement of Material Facts and Memorandum of Points and Authorities and Plaintiff's Affidavit in support thereof, has been effected upon defendant by mailing copies thereof to its attorney, Ellen Lee Park, Assistant United States Attorney, Washington, D. C., this 14 day of September, 1963.

WARREN E. MILLER,
Attorney for Plaintiff.

Filed September 14, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH, ET AL., *Defendants*.

PLAINTIFF'S POINTS AND AUTHORITIES IN SUPPORT OF HIS
MOTION FOR SUMMARY JUDGMENT

Reference is made to the nine specific items of non-compliance with Section 14 of the Veterans' Preference Act as set forth in paragraph 2 of Plaintiff's Statement of Material Undisputed Facts pursuant to Local Rule 9(h) which will not be repeated here. These instances show specific violations of Section 14 of the Veterans' Preference Act.

1. Navy Department Regulation N.C.P.I. 351.9-3 provides for restoration of employee after improper reassignment. By virtue of this regulation plaintiff's reassignment in a position of lower rank was in violation of Sections 14 and 12 of the Veterans' Preference Act and the retention preference regulations of the Navy Department. He should, therefore, be assigned as Group Master.

2. Navy Department Regulation N.C.P.I. 351 provides that reduction-in-force procedures will be used to select employees for reassignment or to be changed to lower grades when changes are caused by reorganization.

3. There has been no substantial compliance with the procedural requirements prescribed by the Navy Department's Regulations.

4. The organization chart prepared and signed in August 1960 (plaintiff's Exhibit 12, page 1) was changed (see plaintiff's Exhibit 12, page 2) after plaintiff indicated his dissatisfaction with the selection of Group Master. The organization which was established does not conform with the

basic objectives of shop grouping that is at variance with the established pattern in other naval shipyards.

5. Prior to 1 February 1961 plaintiff, as Master Shipfitter, was the highest ranking civilian in complete charge of Shops 11/26, which were the largest and most diversified and complex group of shops under a single Master position (Plaintiff's Exhibit 9, page 9, paragraph 3). Prior to 1 February 1961, Mr. Simon, as Master Sheet Metal Worker, was responsible for only a relatively small shop, with less than one-third employees, as were Shops 11/26. (Plaintiff's Exhibit 10 pages 2-3).

6. Although Group Masters have been receiving additional compensation since 11 November 1960 (plaintiff's Exhibit 13, page 1) plaintiff has not received any additional compensation which indicates a reduction in rank.

7. Plaintiff's appeal from the adverse action of Defendant No. 1 was blocked by the Civil Commission refusing to act unless or until the Navy Department issued a standard personnel form and the Navy Department would not issue such a form unless ordered to do so by the Civil Service Commission. This impasse prevented final resolution by administrative remedies of the plaintiff's appeal action and shows the Defendants Nos. 2, 3 and 4 were not fulfilling the obligation imposed upon them by Section 14 of the Veterans' Preference Act of 1944.

8. Plaintiff contends that all of the Navy Civilian Personnel Instructions P-122, or extracts from said Instructions, were derived from a complete reprint of NAVEXOS P-122, dated July 1960 and were in full effect at the Boston Naval Shipyard when the selection of the individuals to fill the Group Master positions was announced on 30 November 1960 and when the selections were placed in full, immediate, and permanent effect on 1 February 1961 by formal written order of the Shipyard Commander. This contention is based on the fact that these regulations were approved by R. E. Cronin, Chief of Industrial Relations, on 26 August 1960 and have an issue date of 15 October 1960. Plaintiff therefore contends that the defendants, within the criteria of the N.C.P.I.'s as quoted in plaintiff's Statement of Material Undisputed Facts Pursuant to Local

Rule 9(h) are required to abide by the provisions of the N.C.P.I.'s as they have been previously quoted in this action, in relation to reorganization, reassignment, establishment of positions, adverse actions, reduction-in-force procedures, and retention preference regulations; and they did not.

9. Plaintiff does not request the court to give him duties, he asks the court to order the defendant to comply with the procedural requirements of defendants' own regulations that were in effect when the reassignments of Mr. Simon and Mr. Dugan were proposed on 30 November 1960 and placed in effect on 1 February 1961. These regulations were not complied with to effect the reassignments of either Mr. Simon or Mr. Dugan to their present positions. Plaintiff is requesting, therefore, that the court set aside the illegal reassignment action that resulted in Mr. Simon's placement as the Group Master retroactive to effective date of 1 February 1961; and that the plaintiff be reassigned to the position of Group Master retroactive to the effective date that he was illegally denied his legal rights to the Group Master position, 1 February 1961, and that plaintiff be retroactively granted all rights and benefits that have accrued to the position of Group Master subsequent to 1 February 1961.

/s/ WARREN E. MILLER,
Attorney for Plaintiff,
810—18 Street, N. W.,
Washington, D. C.

CERTIFICATE OF SERVICE

I certify that I have mailed a copy of the foregoing Plaintiff's Points and Authorities in Support of His Motion for Summary Judgment, postage prepaid, to Ellen Lee Park, Assistant United States Attorney this — day of September, 1963.

/s/ WARREN E. MILLER,
Attorney.

Filed September 14, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff,*

vs.

FRED KORTH, ET AL., *Defendants.*

PLAINTIFF'S AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

District of Columbia: ss:

Francis J. Dugan, after being duly sworn upon oath according to law deposes and says that he is plaintiff in the above-entitled cause and makes affidavit for use in support of plaintiff's Motion for Summary Judgment and attaches thereto certain exhibits, and recites therein certain regulations of the Navy Department the contents of which exhibits and regulations are hereby certified by plaintiff to be true and correct; and plaintiff states he has personal knowledge of and is familiar with all the matters and things herein-after set forth, which are true and correct.

1. I am a citizen of the United States, a resident of the State of Massachusetts, and an ex-serviceman who served on active duty in the Armed Forces of the United States and was separated therefrom under honorable conditions, and am a permanent preference eligible who has completed a probationary period employed in the U.S. Civil Service under the Department of the Navy and as such am entitled to the benefits conferred by Section 14 of the Veterans' Preference Act of 1944 (3 U.S.C.A. 863).

2. The record clearly shows I experienced a reduction in rank contrary to the mandatory provisions of Section 14 of the Veterans' Preference Act of 1944 and in violation of the Personnel Instructions of the Navy Department and

the concurrent and contributing violation of Section 12 of the Veterans' Preference Act.

3. The reduction in my rank was accomplished by Defendant Number 1, without compliance by him with Section 14 of the Veterans' Preference Act. The provisions of said Act which were violated by Defendant Number 1, were as follows:

a. I was reduced in rank, but no reasons were given in writing.

b. Thirty days' advance, written notice was not given, stating any and all reasons specifically and in detail for such proposed action.

c. I was not given a reasonable time for answering a proper notice, personally and in writing.

d. I was not allowed a reasonable time for furnishing affidavits in support of my answer, in accordance with a proper notice.

e. I was not given the right to appeal to the Civil Service Commission from the adverse decision of the administrative officer who reduced my rank, although I timely filed a written appeal after receipt of such notice of adverse decision.

f. Defendants Numbers 2, 3 and 4 arbitrarily refused to consider my appeal, giving as their reasons that I had not been reduced in rank within the purview of Section 14 of the Veterans' Preference Act.

4. Defendant Number 1 did not issue a formal personnel action upon the prescribed forms used for such purpose by the Navy Department. He did, however, write a letter to me, dated February 1, 1961 (Defendants' Exhibit Number 1, Item 2, page 2), in which Mr. Simon was given full authority and full responsibility for over-all policy, administration and operation of the shops of which I was previously in charge as the highest civilian supervisor. In this letter, I was directed to report directly to Mr. Simon and to be accountable to him for all matters affecting the organization, facilities and administration of the Shipfitting and Welding Shops and for such other duties as I might be

assigned in connection with the over-all shop grouping program.

5. The defendant concurrently did not issue a formal personnel action form upon the prescribed forms used for such purpose by the Navy Department to effect the concurrent change to the position of Group Master of Mr. Simon. He did, however, in a letter to Mr. Simon, of 1 February 1961 (P. Ex. 15 attached) state:

"As of this date, in addition to your duties as Master of Shop 17, you are *authorized and directed to assume full responsibility for the administration and operation of the Structural Group. I am sending separate letter to Mr. Dugan, directing him to report to you.*" (Italics supplied.)

6. P. Exhibit 15 was completely and immediately effective in establishing Mr. Simon in the position of Group Master as of 1 February 1961. Mr. Simon immediately assumed the duties of the Group Master position, even though it had not been established as required by the Navy Regulations. The position title had not been properly authorized, and the criteria defining the duties of the position had not been established. The position of Group Master was not properly established by title and definition of duties until some date subsequent to 17 August 1961 (P. Exhibit 11, page 1) ¹

7. I cannot state the exact date, or the personnel action form used to belatedly officially confirm the action issued and initiated by Shipyard Commander's letter of 1 February 1961 to Mr. Simon (P. Exhibit 15),² because the defendant refused to comply with my written request for a copy of this personnel action. The defendant refused to provide this information on the basis that this action form was in the personnel folder of Mr. Simon and was confidential information; the defendant did not, however, sup-

¹ Which was attached to Plaintiff's Points and Authorities in Opposition to Defendants' Motion for Summary Judgment.

² Attached hereto.

ply this information from the other sources from which it was available that are not confidential in nature, when I further requested him in writing to do so.

8. Notwithstanding the position of Defendants 2, 3 and 4 (the Civil Service Commission) to the contrary, the letter of 1 February 1961 from the Shipyard Commander to Mr. Simon was a personnel action form that effectively placed Mr. Simon in the Group Master position on 1 February 1961, whereupon he performed the full duties thereof and has continued to perform the full duties of Group Master to present date.

9. A standard personnel action form was issued to Mr. Simon, sometime subsequent to 17 August 1961, to confirm the action initiated on 1 February 1961.

10. The letter of the Shipyard Commander to me on 1 February 1961 (Defendants Exhibit 1, Item 2, page 2) was a personnel action form and immediately placed in effect my reassignment to the position of "Head of Shops 11/26. The defendant has not yet officially confirmed this action by the issuance of a standard personnel action form to me. I am thus denied the use of this form to confirm that the changes to my former position have officially occurred; and resulted in the reduction in the organizational, reporting and counseling levels, reduction in duties and responsibilities by transfer to the Group Master, of my position, and occurred as a direct result of the reassignment actions that resulted in my reduction-in-rank, contrary to defendant's own regulations and Sections 12 and 14 of the Veterans' Preference Act re-reassignment actions, and reassignment sections effecting changes to lower grade (or rank).

11. The defendant has since 1 February 1961 officially established and defined the position of Group Master. The defendant did not concurrently establish the position title and duties of the "Head of Shop" position (as it is now used). Up to the present time, the duties of a Head of Shop position have not been properly established and defined, in accordance with defendant's regulations. I am not performing the full and complete responsibilities, duties,

etc. as listed in my Official Position Description of Master Shipfitter (P. Exhibit 2).³ The defendant has not specifically claimed or certified that I am performing these duties of Master Shipfitter.

12. On February 6, 1961, I filed an appeal with the First Region of the United States Civil Service Commission at Boston which is set forth in Government Exhibit 1, Item 3, pages 4 and 5, with which there were two exhibits filed, Item 1, page 3, and Item 2, page 2.

13. Approximately 50 of the functions that have been transferred from my supervision to the supervision of the Group Master, Mr. Simon, since February 1, 1961, are listed on Defendant's Exhibit 1, page 81, paragraph a, through page 79, paragraph zz, and on Plaintiff's Exhibit 16 which is attached hereto as a matter of convenience and by reference hereby made a part hereof.

14. Plaintiff attaches hereto and asks to be read as a part hereof his affidavit filed in this cause in opposition to Defendants' Motion for Summary Judgment.

/s/ FRANCIS J. DUGAN.

Subscribed and sworn to before the undersigned Notary Public this 27th day of August, 1963.

/s/ EVA M. MIGNONIS,
Notary Public, District of Columbia.

My Commission expires 5/31/65

³ Attached to Plaintiff's Affidavit in Opposition.

Filed October 15, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH, ET AL., *Defendants.*

STATEMENT OF GENUINE ISSUES

1. Plaintiff was reduced in rank.
2. The functions which plaintiff performed prior to 1 February 1961 were transferred from him to Mr. Simon, a non-veteran, on that date. Although there was a transfer of the functions he was not offered to follow the functions as required by Navy Department Regulations N.C.P.I. 351-9-4(c)(d).
3. The resolution by administrative remedies of plaintiff's appeal was blocked by the defendant Commissioners of the United States Civil Service Commission refusing to act unless a standard personnel form was issued and would not direct the Navy Department to issue such form and used this as a means of depriving plaintiff of their administrative review of his case.
4. The action which plaintiff contends amounted to a reduction in rank by defendant No. 1 was taken without defendant No. 1 complying with Section 14 of the Veterans' Preference Act in the following respects:
 - (a) No reasons were given in writing for this action by defendant No. 1.
 - (b) Plaintiff was not given 30 days' advanced notice in writing by defendant No. 1 for this proposed action.
 - (c) Plaintiff did not receive from defendant No. 1 a statement of any and all reasons, specifically and in detail, for reducing him in rank.
 - (d) Defendants Nos. 2, 3 and 4 refused to consider

a letter addressed to plaintiff from the Commanding Officer of the Shipyard as a "personnel action" within the meaning of the Civil Service Regulations so as to authorize an appeal to the Civil Service Commission from the adverse action of defendant No. 1 in plaintiff's case.

(e) Defendants Nos. 2, 3, and 4 refused to take jurisdiction of plaintiff's appeal, assigning as the reason therefor that plaintiff's appeal was not "within the purview of Section 14 of the Veterans' Preference Act," thereby depriving plaintiff of his right of appeal from the adverse action of defendant No. 1.

(f) The letter which plaintiff received from the Shipyard Commander (Exhibit 4 to Defendant's Statement of Material Facts) advised plaintiff that he was being reassigned to another position known as "Head of Shop" and that in this new position he would report to the Group Master and be accountable to him for all matters affecting the organization, facilities and administration of the shipfitting and welding shops.

(g) That on 1 February 1961, when plaintiff's successor, Mr. Simon, was assigned full responsibility for overall policy, administration and operation of Shops 11/26, the Master Shipfitter's position was no longer the ranking civilian position in Shops 11/26.

(h) The Group Master's position has been retained in the organizational, counseling and reporting levels of plaintiff's position and plaintiff's previous position declared by Navy Department¹ and Civil Service Commission² to be subordinate to the Group Master's position. The duties of the Group Master's present posi-

¹ Job Title, Master Mechanic, Structural Group. Purpose: to direct and coordinate through *subordinate shop heads*, the Production Department functions assigned to the Structural Group which includes the Shipfitting Shop (11) and the Welding Shop.

² The announcement for a competitive promotion examination for Master Mechanic (Structural Group) issued 6 Aug. 1963 (P. Ex. 14) describes the work of the Group Master as follows: "Directs and coordinates through *subordinate shop heads* the Production Department functions assigned to the Structural Groups which includes the Shipfitting Shop (11) and the Welding Shop (26) (P. Ex. 14).

tion, described as Master Mechanic, Structural Group, are described in defendant's Exhibit 1, Item 28, page 105, Paragraphs 1 and 3 as follows:

Job Title: Master Mechanic (Structural Group)

Purpose: To direct and coordinate, through *subordinate shop heads*, the Production Department functions assigned to the Structural Group which includes the Shipfitting Shop (11), Sheetmetal Shop (17), and the Welding Shop (26) in the repair, overhaul, conversion and construction of naval vessels and equipments. (Italics supplied)

5. Plaintiff was qualified to be reassigned to the Group Master position on 1 February 1961, and was in a higher retention group of employees than Mr. Simon. Therefore, the assignment of Mr. Simon rather than plaintiff to the position of Group Master was contrary to the Navy Regulations. (See plaintiff's Exhibit 15 attached to Plaintiff's Statement of Material Undisputed Facts Pursuant to Local Rule 9(h).) The defendants have not abided by the provisions of the Navy Department's Regulations in relation to reorganization, reassignment, establishment of positions, adverse actions, reduction in force procedures and retention preference regulations.

6. The action taken with respect to plaintiff amounts to a denial of procedural due process.

/s/ WARREN E. MILLER,
810—18th Street, N. W.
Washington, D. C.
Attorney for Plaintiff.

ACKNOWLEDGMENT OF SERVICE

Service of a copy of the foregoing Statement of Genuine Issues acknowledged this 15th day of October 1963.

/s/ ELLEN LEE PARK,
*Assistant United States Attorney,
Attorney for Defendants.*

Filed October 21, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH, ET AL., *Defendants.*

ORDER

This cause having come before the Court on defendants' motion for summary judgment and plaintiff's motion for summary judgment, and upon consideration thereof and of the opposition thereto, and of argument of counsel, and it appearing to the Court that there is no genuine issue as to any material fact involved herein, and that defendants are entitled to judgment as a matter of law, it is by the Court this 21st day of October, 1963

ORDERED that plaintiff's motion for summary judgment be and it hereby is denied, and it is further

ORDERED that defendants' motion for summary judgment be and it hereby is granted and that the action herein be and it hereby is dismissed.

JOSEPH C. McGARRAGHY,
Judge.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing proposed order has been made upon plaintiff by mailing a copy thereof to his attorney, Warren E. Miller, Esquire, 810 Eighteenth Street, N. W., Washington 6, D. C., this 16th day of October, 1963.

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

PLAINTIFF'S EXHIBIT 14

Issued: 6 August 1963

CPE Annet.

Closing Date: 5 September 1963

No. 23-63

DEPARTMENT OF THE NAVY
BOSTON NAVAL SHIPYARD
BOSTON, MASSACHUSETTS

Announces a competitive promotion examination for:

MASTER MECHANIC (STRUCTURAL GROUP)

\$13,208.00 \$13,748.80 \$14,289.60 per Annum

(Plus \$0.37 an hour additional pay differential)

ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION
FOR PROMOTION WITHOUT REGARD TO RACE, CREED, COLOR,
SEX, OR NATIONAL ORIGIN.

For Duty at, Boston Naval Shipyard, Boston, Massachu-
setts.

Area of Consideration

Applications will be accepted from career or career-con-
ditional employees of all U. S. Naval Shipyards, Labora-
tories, Repair Facilities, Supervisor of Shipbuilding Of-
fices, and Industrial Manager Offices under the manage-
ment control of the Bureau of Ships; and Bureau of Ships
Headquarters.

Description of Work

Directs and coordinates through subordinate shop heads
the Production Department functions assigned to the
Structural Group which includes the Shipfitting Shop (11),
Sheetmetal Shop (17), and the Welding Shop (26), consist-
ing of approximately 1430 workers and supervisors, in

the repair, overhaul, conversion and construction of naval vessels and equipments. Reports to the Production Officer, a Captain, USN. Incumbent is delegated full authority to manage the diverse and changing work operations performed by the group of shops under his control. Problems of top management concern are referred to him, from both directions, for analysis and resolution. The Production Officer does not normally concern himself with the intimate details of operations. Indices, which portray the effectiveness of Structural Group operations, are available. The incumbent's judgment, executive ability, and trade knowledge are relied on by the Production Officer in the management of Structural Group operations. This relationship is built on mutual respect and support as would be expected of top management personnel. Has top responsibility for the development and maintenance of a skilled, competent, fully rounded, and versatile work force within the Structural Group. Directs the establishment of effective work methods, arranging of tools and facilities, determination of present, anticipated, and long range workloads. Work is received in the form of job orders which specify the scope of the work. Master production schedules prescribe completion dates for each job order. Directs adherence to schedules and oversees completed work in terms of time, costs, and effectiveness. Has continuing daily personal contacts with Structural Group Shop Heads and top management shipyard officials including, from time to time, the Shipyard Commander. Also, has frequent contacts with Bureau representatives and executives of private firms regarding Structural Group management and operations. Is authorized to speak, take action, and commit the Structural Group in matters under his cognizance.

Experience and Training Requirements

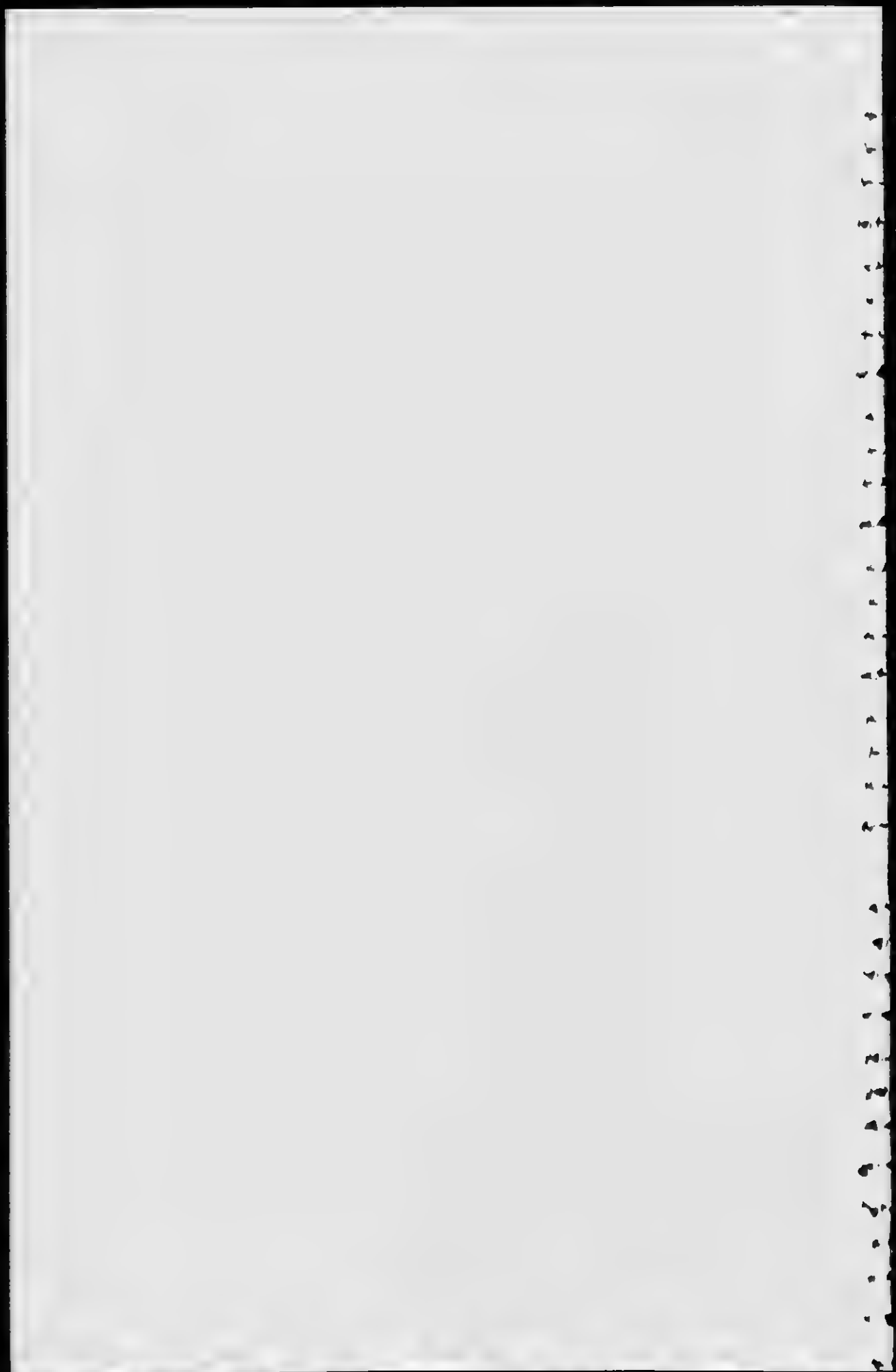
Subsequent to attaining journeyman status in the Shipfitter, Sheetmetal Worker, or Welder trade, applicants must have had successful and satisfactory experience in any one of the ratings or occupations specified in the

following table for the length of time shown, or in any combination thereof:

Rating or Occupation	Total (years)
Foreman Mechanic and above.....	1
Chief Quartermaster, Head of Shop or comparable organizational unit, or one who reports directly to the Head of a Shop.....	1
Chief Quartermaster.....	2
Chief Shop Analyst and Scheduler.....	2
Senior Supervisory Inspector.....	2
Senior Supervisory Aircraft Examiner.....	2
GS-12 and above in certain occupations.....	2
Quartermaster.....	4
Senior Shop Analyst and Scheduler.....	4
Supervisory Production Controlman.....	4
Supervisory Planner and Estimator.....	4
Supervisory Progressman.....	4
Supervisory Ship Scheduler.....	4
Supervisory Ship Progressman.....	4
Supervisory Ship Surveyor.....	4
Supervisory Aircraft Examiner.....	4
Supervisory Estimator.....	4
Supervisory Inspector.....	4
GS-11 in certain occupations.....	4

To be creditable the graded positions specified above must have been in the following occupations and grades:

• • • • •



PLAINTIFF'S EXHIBIT 15

February 1, 1961

Copy

BOSTON NAVAL SHIPYARD

(100)

LL/Simon, F. J.

Mr. Frank J. Simon,
Master, Shop 17,
Production Department,
Boston Naval Shipyard,
Boston 29, Massachusetts.

Dear Mr. Simon:

I have reviewed your plan for the Structural Group as submitted by your letter of 12 January 1961 and I find that your proposed plan in general is well within the framework of the proposed plan approved by the Bureau of Ships, and meets with my approval.

However, some of the staffing details of your proposed plan are not clear—such as a Material Unit wherein are assigned certain Group 3 personnel other than those in the rating of Shop Planner, and the Budget Unit, where no staffing is indicated. Assignments of this nature—such as the handling and expediting of material, preparation of budgets, etc., are not clearly defined with respect to rating and description of duties. Therefore, I expect that the Production Officer will audit in detail your plan in this and other areas in order to insure there is no assignment of personnel to duties not within the scope of their respective ratings.

Physical relocation of the industrial operations of Shops 11, 17 and 26 into Bldg. 104 as proposed, require adjustments and new assignments of space within the Production Department. This is being made part of the over-all study for shop grouping being conducted by the Production Department. Pending completion of this study and a deter-

mination as to what major changes will be approved and financed, action on your proposal for such relocation will be deferred.

The proposed centralization of administrative and planning functions for Shops 11, 17 and 26 into Bldg. 104, which would not entail major fund expenditures, is concurred in, and action to house these segments of your organization in this central location should be started immediately on the availability of funds.

As of this date, in addition to your duties as Master of Shop 17, you are authorized and directed to assume full responsibility for the administration and operation of the Structural Group. I am sending separate letter to Mr. Dugan, directing him to report to you.

Sincerely,

W. A. BROCKETT,
Captain, USN,
Commander.

PLAINTIFF'S EXHIBIT 16

RESUMÉ

OUTLINE OF SHIPYARD ORGANIZATION, PREVIOUS AND SUBSEQUENT TO THE SHOP GROUPING REORGANIZATION PROGRAM AND THE BASIC ELEMENTS SUBSTANTIATING THE VIOLATION OF THE VETERANS' PREFERENCE ACT OF 1944, SECTIONS 12 AND 14, APPEAL OF FRANCIS J. DUGAN VS. BOSTON NAVAL SHIPYARD ADVERSE ACTION—REDUCTION-IN-PAY.

Organization Previous to Shop Grouping

1. Previous to the Shop Grouping Reorganization, the Boston Naval Shipyard Production Department, Production Shops, were under the control of approximately fifteen (15) Shops Masters of the basic trade or rate, such as Master Shipfitter, Shops 11/26, Master Sheetmetal Worker, Shop 17, Master Woodworker, Shop 64, Master Electrician, Shop 51, etc. Each Shop Master was the Senior Civilian Supervisor in full and complete charge of all areas in his respective shop or shops, and each was answerable directly to the Production Officer, as their immediate supervisor and Department Head. The following quotes are extracts from the specific position of Master Shipfitter Position Description Sheets:

"I normally report to Capt. J. E. Flynn, Production Officer, Boston Naval Shipyard, a naval officer, from whom I receive only general administrative supervision as on matters of policy and over-all objectives in relation to safety, personnel, good housekeeping, broad trends in workload, and general performance of the Production Department with respect to timeliness, proficiency quality and economy. I receive no technical supervision. Generally, I am free to perform my duties according to my best and considered judgment, and I am required to accept this responsibility by taking the initiative for all work performed by Shops 11/26 personnel."

"The Production Officer occupies a billet of limited ten-

ure as distinct from the position of Master Shipfitter, the occupancy of which is permanent in character and through which continuity of policy and practice is exercised."

"I am responsible for the executive direction, administrative control and technical competence of all components of the Structural Shop. I am responsible for administering, coordinating, and directing the work of the Structural Shop which encompasses the Shipfitter Shop, Shop 11, and the Welding Shop, Shop 26, in a safe, timely, economical and productive manner."

The foregoing quoted extracts would be typical of a portion of the general responsibilities listed in the Position Description Sheets of all of the previous fifteen (15) Shop Masters positions.

The responsibilities of these fifteen (15) respective Shop Masters varied considerably in number of employees in the respective shops, size of administrative force, size of Shop Planning Force, size of Personnel force, number and types of trades supervised, dollar value of shop buildings and equipments, dollar value of shops operating budget, size, number and geographical location of areas responsible for, etc.

The basic policy of the Navy Department, however, despite these differences was that all of the fifteen (15) Shop Master positions were organizationally equal to each other in all respects. They all reported directly to the Production Officer as Dept. Head. The Production Officer, in turn, was responsible to the Shipyard Commander. All fifteen (15) Shop Masters were thus in Organizational Level #3, all fifteen (15) received the same rate of pay, all fifteen (15) were equal in rank to each other, all fifteen (15) exercised the same policy *determining* functions and general administrative, etc. functions, there was not any civilian position in the Production Dept. that exercised any degree of line authority over any of the fifteen (15) Shop Master positions and each of the fifteen (15) was in full and complete sense the Senior Civilian Supervisor of his respective shop or shops.

Organization Subsequent to the Grouping

2. The Boston Naval Shipyard, Production Dept., is now organized so that there are five (5) groups of shops and two independent shops that have not been grouped. Each of the five groups is headed by a former Shop Master that has been designated as a Group Master with full line authority over each and every shop within his respective Group in all areas of each shops operations. A typical Group is the Machinery Group composed of the former independent Shops 38, 41, and 56. Shop 38, Marine Machinists and formerly the full responsibility of the Master Machinist Marine Shop 41, the Boilermakers Shop and formerly the full responsibility of the Master Boilermaker; and Shop 56, the Pipefitting Shop and formerly the full and *only* responsibility of the Master Pipefitter. The former Master Pipefitter, who previously *only* had authority over Shop 56, has been designated as Machinery Group Master and now has full and complete final responsibility and direct line authority in all areas of the operations of the formerly independent Shops 38 and 41. The Group Master has the line authority to approve, reject, modify or otherwise change any order given or action taken by the now subordinate and formerly equal Shops Masters of Shops 38 or 41 in any area of the shops operations. The now subordinate Shop Masters have been permitted to retain the title of their former position for pay purposes and to enable the Navy Dept. to attempt to claim that their position has not changed; however, the new organization charts show that they are Head of Shop 38 and Head of Shop 41 respectively. The position of Head of Shop is clearly shown as subordinate to the Group Master position in the revised line organizational charts. A fact peculiar to the Boston Naval Shipyard is that the Group Masters have been double billeted as Group Master and concurrently Head of their respective parent shop; in all other Naval Shipyards, the Group Master, upon his designation as Group Master, was relieved of his former duties in his parent shop and a new individual was designated as Head of his former shop, but subordinate to him. This peculiarity of double billeting

in the Boston Naval Shipyard was possible prompted by the fact that it was widely known in the activity that I was considering filing an appeal when Shop Grouping was implemented. Since documentary evidence establishes that the Group Master has full and direct line authority in all areas of the operations of each and every one of the shops within his group, it is also clearly evident that he is now the Senior Civilian Supervisor in each and every shop within his group and that the former Shop Masters now have been reduced to occupying a secondary and subordinate position.

The Production Dept. is now organized so that the line organization charts show that the Production Officer as Dept. Head reports to the Shipyard Commander, the Group Masters report to the Production Officer and the Masters of the two still independent production shops that were not grouped report to the Production Officer (though the revised charts designate them as Head of their respective shops). The Masters of the formerly independent shops who were not designated as Group Masters now report to the Group Masters. Thus, it is clearly evident that the Group Masters have been retained in Organizational Level #3 and the former independent Shops Masters that were formerly in Organizational Level #3 have been reduced to Organizational Level #4. It is also clearly evident that the now subordinate Shop Masters now report to a lower level of supervision in their subordinate position of Head of Shop, and that they now report to individuals that they were formerly organizationally (as Navy Dept. policy) equal to in all respects.

The following listing is a partial enumeration of the, in my opinion, factual elements that substantiate, establish and relate to the fact that my misassignment of 1 Feb. 1961 from my previous position and title of Master Shipfitter, or Senior Civilian Supervisor in Charge of Shops 11/26, a grouping of two large and diversified shops, then known as the Structural Shop 11/26, the then highest Senior Civilian Supervisor with full, complete and final line and policy determining authority for all areas and operations of the shop grouping then composed of Shops 11/26, the

then largest and most diversified single unit in the Production Dept. under the complete supervision of a single autonomous Master position; to my present empty official title of Master Shipfitter and actual position and title of Head of Shops 11/26 by a formal written non-standard personnel action form personally initiated and issued by the Shipyard Commander to place in immediate affect the actual position change from my former to my present actual position, of lesser rank, status, authority, etc., constituted an adverse action to me, in violation of Sections 12 and 14 of the Veterans' Preference Act, and that this violation of the Veterans' Preference Act was accomplished by the application of previously well-planned, improper and/or illegal administrative procedures in additional violation of Civil Service Regulations and Naval Civilian Personnel Instructions.

I can, *have* and will further establish by documents and witnesses that the following actual changes have taken place in my former position of Master Shipfitter, despite the fact that I have been *permitted* to retain the pay and title of Master Shipfitter for pay purposes and to attempt to disguise the actual changes that have occurred since and by my designation as Head of Shops 11/26.

1. The Group Master, or Senior Civilian Supervisor in Charge of Shops 11/26, is now the *highest* Senior Civilian Supervisor, with full, complete and final authority over the formerly independent Structural Shops 11/26 group, by his lateral misassignment as Group Master.

2. The former Master Shipfitter position, by downgrading misassignment to Head of Shops 11/26 is now the *second* highest Senior Civilian Supervisor, with the limited authority etc. that has been allowed to remain in the Head of Shops 11/26 position, over the areas and operations of Shops 11/26.

3. The misassignments to the Group Master and Head of Shops positions were placed in *permanent, immediate, and full effect* by formal written order of the Shipyard Commander 1 Feb. 1961.

4. The former position of Master Shipfitter is *not shown* on the revised Organizational Charts that were recently

submitted to BuShips (Oct. or Nov. 1961). Only the positions of Group Master and Head of Shop are shown in the Shop Grouping Organization.

5. The use of a formal letter from the Shipyard Commander to effect the position changes, provided the Navy Dept. a greater opportunity to attempt to evade the administrative requirements of Civil Service Regulations, NCPI, and the *provisions, intent and purpose* of the Veteran's Preference Act Sections 12 and 14, in their arbitrary selection of individuals to fill the respective positions at the time of implementation of Shop Grouping.

6. The stated, documented policy of the Navy Dept. was that the selection of an individual to fill the position and perform the duties of a Group Master position *would not* constitute a promotion for the individual so selected.

7. The Master Sheetmetal Worker, by his lateral misassignment to Group Master, has been retained in Organization Level #3.

8. The former Master Shipfitter has been reduced to Organizational Level #4, from his former position in Organization Level #3.

9. The Master Sheetmetal Worker, as Group Master, has retained his responsibility to report directly to the Production Officer, a Navy Captain, Department Head position in Organizational Level #2.

10. The Former Master Shipfitter has been reduced to reporting directly to the Group Master position in Organizational Level #3, in lieu of the Production Officer in Organizational Level #2, that he formerly reported directly to.

11. The formerly independent shop grouping of Shops 11/26, then known as the Structural Shop 11/26, has been merged into the new Structural Group, under the *complete and direct* supervision of the new Group Master.

12. My position now reports to a lower level of supervision in the immediate area, the Group Master, and the occupant of this position, my current position reports directly to, was my organizational equal prior to the transfer of my grade—determinant functions to his position, by his misassignment as Group Master.

13. The down-grading misassignment to the actual title and position of Head of Shops 11/26 has had the result that I am now organizationally equal, in every respect, to individuals with the current ratings of Foreman and Chief Quartermen, who have been assigned to Head of Shop positions. The ratings of Foreman and Chief Quartermen were clearly subordinate to my former position of Master Shipfitter.

14. In some of our other Naval shipyards, the title and position of Master Shipfitter was rerated to the title and position of Group Master by a straight lateral reassignment, and both positions and/or titles perform exactly the same duties, etc., to exactly the same extent, and both positions are completely identical, in all respects, except for the change of title from Master Shipfitter to Group Master. Further, in other activities, other former Shop Masters than the former Master Shipfitter, have been laterally reassigned by a rerating to Group Master of other groups, without any change in duties, etc.

15. The previous item (#14) confirms the stated Navy Dept. policy that the designation to a Group Master position would not constitute a promotion for the individuals so designated. This must then confirm that a new level of supervision has not been interposed between the former Masters' position, that were not designated as Group Masters, and the Production Officer, but rather establishes that the Group Master positions have been retained in the same organizational and reporting levels, etc., by the lateral reassignment or misassignment. This further substantiates that the former Masters that were not designated as Group Masters have had their former organizational and reporting levels reduced by one level by down-grading misassignment.

16. My position is now subordinate in status, rank, authority, etc., to numerous individuals in the immediate area of the supervisory relationships, that are now occupying Group Master positions. The individuals that now occupy these positions were formerly my organizational equals; when I possessed the organizational and reporting levels, authority, etc., that was then equivalent to theirs; prior

to my loss of such items by transfer of them to a Group Master position.

17. The following duties that were formerly the duties of the Master Shipfitter position in the Boston Naval Shipyard as stated in the Position Description Sheet NAVEXOS 3473, requested by OIR Notice 12250 of 26 June 1957 and submitted in September 1957 (Exhibit hh, with Encl. 1, 2, 3, 4), have been transferred to the Structural Group Master position since the inception of BuShips Shop Grouping Reorganization in the Boston Naval Shipyard, effective 1 Feb. 1961, by direct, formal, written order of the Shipyard Commander.

(a) I, as Master Shipfitter, have had my position reduced one level in the Senior Supervisory Organizational levels of the activity. Specifically, I have been reduced to Organizational Level #4 from Organizational Level #3, and the Master Sheetmetal Worker, in his current misassignment as Structural Group Master, has been retained in Organizational Level #3.

(b) I, as Master Shipfitter, have had my reporting level of supervision reduced one level. Specifically, I formerly reported directly to the position of Production Officer, a Naval Captain's billet as Production Dept. Head in Organization Level #2. I now report directly to the position of Structural Group Master, a civilian position in Organizational Level #3. The Structural Group Master position is now occupied by the Master Sheetmetal Worker's position, the Master Sheetmetal Worker formerly did not have any authority or connection with any of the operations or areas of Shops 11/26. The Master Sheetmetal Worker, in his present capacity of Structural Group Master, now has full, complete and final line authority to exactly the same extent, formerly possessed by the Master Shipfitter position, over all operations and areas of Shops 11/26. As the civilian supervisor with such complete, full and final authority over all other civilian positions within Shops 11/26, he is the Senior Civilian Supervisor, in full and complete final charge of Shops 11/26, and all other positions within Shops 11/26 are clearly subordinate, in all respects, to the Structural Group Master, as the Group Master now has

the highest civilian authority that was formerly possessed by the Master Shipfitter position to approve, reject, modify, or otherwise change any action initiated in any area of the operations of Shops 11/26, by any of the subordinate supervisory positions within Shops 11/26, including those initiated by the formerly, at civilian level, autonomous position of Master Shipfitter.

(c) *The Group Master position now has had transferred to his position the full, complete and final authority for all of the following former functions, duties, responsibilities, etc., that were formerly in the position of Master Shipfitter.* The Group Master position possesses, and exercises this full, complete and final authority, etc., over all areas and operations of Shops 11/26, to exactly the same extent that the Master Shipfitter position formerly possessed and exercised the exact same full, complete and final authority over all areas and operations of Shops 11/26, at the Civilian level. The actual transfer of the following specified functions have been fully and completely documented by exhibits previously submitted to the Commission and are a matter of record. If the Commission desires further documentation to further establish the actual transfer of the following functions, I will furnish them.

(d) The formulating and establishing over all shop policy for Shops 11/26 composed of over 1300 employees.

(e) The Administration of Shops 11/26.

(f) The operations of Shops 11/26.

(g) The organization of Shops 11/26.

(h) The facilities of Shops 11/26, \$10,421,000 Buildings and Equipment, 260,000 square feet of usable area.

(i) Preparation and submission of Shop Budget; \$1,500,000 yearly.

(j) Such other duties as the Group Master may assign (a catch-all).

(k) Supervision of Shops 11/26 employees (1300).

(l) Supervision of 13 different trades in 15 different ratings, performing diversified trade operations.

(m) Supervision of Shop 11/26 employees over a wide geographical work area, several buildings, many ships, on a three-shift-a day basis.

(n) Supervision of experimental or non-standard work of Shops 11/26.

(o) Coordinating the efforts of Shops 11/26 in relation to inter and intra-shop relationships, and all other areas.

(p) Supervision of Shop Planning, Clerical and Personnel Sections of Shops 11/26, these are now staff to Group Master.

(q) Policy meetings with the Production Officer and higher authority.

(r) Ordered to attend lower grade meetings with the Repair Supt., formerly my Foreman's assignment.

(s) Scheduling work operations of Shop 11/26.

(t) Formulating Shops 11/26 Safety policy.

(u) Determination of "fitness of employees" physical and trade qualification for Shops 11/26.

(v) Determination of manpower needs for Shops 11/26, by trades and numbers.

(w) Determination of Supervisory needs of Shops 11/26 by trades and numbers.

(x) Selection of supervision for Shops 11/26 by trade and number.

(y) Assignment of supervision for Shops 11/26 by trade and area.

(z) Determination of training needs of Shops 11/26, types and amounts, by trade.

(aa) Performance of trade operations of all Shop 11/26 Supervision and artisans.

(bb) Settlement of trade jurisdictional disputes with labor union officials, or other Shop Masters, relating to Shops 11/26 employees.

(cc) Responsibility to determine the types and procedures of administrative controls to control and coordinate the production operations of Shops 11/26.

(dd) The determination of need, selection and assignment of Shop Planners in Shops 11/26.

(ee) The determination and establishment of Disciplinary Action Policy in Shops 11/26.

(ff) The determination of policy in personnel matters; types of leave, safety, training, fund drives, blood drives,

bond drives, Beneficial suggestions, Incentive Awards, Conservation, etc., for Shops 11/26.

(gg) Determination of need, assignment and selection of administrative personnel for Shops 11/26.

(hh) Determination of need and types of administrative procedures to control Shops 11/26 operations.

(ii) Responsibility for Housekeeping and cleanliness of the building and working areas of Shop 11/26

(jj) Responsibility for shop indoctrination tours of military personnel newly assigned to the activity in relation to Shops 11/26.

(kk) Responsibility for award presentations to Shop 11/26 personnel (Safety, longevity, Beneficial Suggestion, Superior Performance, etc.) for both final review and presentation.

(ll) Responsibility to determine need for submission of and final review of overtime requests for Shop 11/26.

(mm) Assignment of areas, as to use, in buildings under control of Shops 11/26.

(nn) Resolution of material shortages affecting Shop 11/26 operations.

(oo) Responsibility for procurement, security, and maintenance of Shops 11/26 buildings and equipment.

(pp) Responsibility for timely and economical completion of Shops 11/26 work operations.

(qq) Responsibility for security clearance of personnel of Shops 11/26.

(rr) Responsibility as the *highest* and *final* technical authority for Shops 11/26.

(ss) Responsibility as the *highest* ungraded supervisory position for Shops 11/26; there was not any other civilian position that had authority over Shops 11/26.

(tt) Responsibility for cost control of Shops 11/26 operations.

(uu) Responsibility for executive direction of Shops 11/26.

(vv) Responsibility for final authority in the developing and implementation of programs for Civil Defense—Natural Disaster, Mobilization, etc.

(ww) The rerouting of orders, etc., from higher author-

ity direct to the Group Master position. *This is in accordance with the official recognition of my now subordinate status, rank and authority.* These orders, etc., were routed directly to the former Master Shipfitter position, when the Master Shipfitter possessed the final authority, etc.

(xx) Prior to 1 Feb. 1961, as Master Shipfitter, with final authority over the grouping of shops then known as the Structural Shop 11/26, *I then performed all of the duties, etc., to exactly the same extent, that such duties, etc., are now performed by a Group Master position.*

(yy) Authority to exercise my personal judgment, initiative, and originality in all areas of Shop 11/26 operations.

(zz) I do not now even possess the authority to authorize the installation of a drinking water bubbler in the upstairs Supervisor's room, used by the Leadingmen of Shops 11/26 for purposes of timekeeping and other paper work. This request that originated with the Leadingmen and that I now do not have the authority to approve, though I was in full agreement with the request, was disapproved recently, by the Group Master's position. Prior to the transfer of my authority etc., this bubbler would have been installed by my authorization. The formerly autonomous position of Master Shipfitter, now as Head of Shops 11/26, does not even possess sufficient authority and responsibility to authorize the granting of such a minor, simple and reasonable request.

(aaa) The Production Officer has set up a rotation policy of overtime for the now Group Masters. Specifically, they are to report in on an overtime basis and extra pay status, once or twice weekly for a period of 2 hours on the off shifts. They are to rotate weekend overtime assignments among themselves, during periods of weekend overtime work. As a result of this policy, the Group Masters, are now eligible to receive additional pay, in each weekly pay period, the equivalent of from 6 to 18 hours of additional pay, amounting to from \$36.00 to \$117.00 weekly. This is a loss of compensation to my position. If my rights as a preference eligible under sections 12 and 14 of the Vet-

erans' Preference Act, Civil Service Regulations, and the NCPI, had been granted to me, I would have been eligible to receive this additional weekly compensation, since this policy was established.

(bbb) Capt. Brockett's letter to the 1st Civil Service Regional Director dated 23 Feb. 1961 in the last paragraph on page 2 defines the Shipyard's definition of the ultimate test of the elements forming the basis of rank, and states that these elements remain unchanged by my designation as Head of Shop. I have previously stated and substantiated and Exhibit "gggg" now by official Navy documents conclusively proves my responsibilities have been *lessened*, my authority has been *diminished*, my grade determinant functions have been *transferred* to another position, my status is now *subordinate* to formerly equivalent positions, my rate of pay has remained the same, my seniority has remained the same as it would if I were performing apprentice duties again. The following items not substantiated by Exhibit "gggg" have also occurred, my *prestige* and reputation have been irreparably damaged.

Exhibit "gggg" will be conclusive to the Board that in every element of rank, as defined by the Navy Dept., except pay, and seniority which cannot be changed, my position has been substantially reduced.

(18) The following items, in my opinion, will further illustrate and substantiate that I have been substantially reduced-in-rank and status, and further substantiate the extent to which this reduction-in-rank is actually and fully recognized by all levels of the Navy Dept. and this activity.

(a) Official Navy documents state that I will be *permitted* to retain my title and pay. These documents do not state that I am *entitled* to retain my title and pay. This clearly indicates that the Navy Dept. is aware that a reduction in my position has occurred.

(b) I have been involuntarily relocated, by direct order of the Group Master, to a much smaller and much plainer office, in my new position; than either the former office occupied by the former Master Shipfitter position, or the relocated office now occupied by the new Group Master position.

(c) The seating assignments at social functions sponsored by shipyard-connected private organizational groups, have been altered to reflect the new subordinate rank and status of the non-Group Master.

(d) Non-Group Master positions are now not invited to official functions, that in their former position of independent Shop Master, it was Navy Dept. policy to invite them to. Now, in recognition of the former Shop Masters subordinate status and rank, only the new Group Master positions are invited. This situation has also occurred relative to invitations from shipyard connected private organizations.

(e) Shortly after their misassignment, as Group Masters, the Group Masters made arrangements to eat in an area separated from the area they had used for years. They formerly ate with all other former Shop Masters in the Master-Foreman quarters. They do not now dine in this area, and have left the company of the now subordinate non-Group Masters.

(f) The new Group Master positions, after years of membership in the Masters and Foreman's Association, have resigned from such membership in the Boston Naval Shipyard.

(g) Boston is the *only* Naval Shipyard that has the position of Foreman Welder report to the Group Master, through the Head of Shops 11/26 position. This is the *only* Naval Shipyard that has the position of Head of Shops 11/26. In other Naval Shipyards the position of Master Shipfitter, that was not reassigned as Group Master was misassigned as *only* the Head of Shop 11, and the Foreman Welder as the Head of Shop 26, and each reports directly to the Group Master. This is the *only* Naval Shipyard that has the Group Master double-billeted as concurrent Head of his parent or basic shop. The above features that are peculiar to the Boston Naval Shipyard, can possibly be accounted for by the fact that it was widely known in this activity that I was considering filing an appeal action. These peculiar features may be an attempt by this activity to minimize my appeal action, and a further extension of

their efforts to disguise the actual differences between my former and present position.

(h) I was informed by the Production Officer that I was well qualified for and that I would undoubtedly be selected for the position of Group Master, the next time it came up, even though he and the Shipyard Commander would probably not be here, at that time.

(i) I have suffered extensive loss of status and prestige and my reputation has suffered irreparable damage, as a result of my actual position change.

(19) It has been documented by Navy documents, that the additional functions, duties, etc., that are now performed by the new Group Master position, were not intended to, and did not come from the Production Officer's position. The Navy documents establish that the functions transferred to the new Group Master position, came from the former independent Shop Masters positions.

(20) *Navy documents establish that the BuShip Shop Grouping Reorganization is installed as a permanent change, and that the respective position changes of individuals to Group Master and Head of Shop positions, by reassignment and misassignment, are permanent, actual position changes.*

(21) The BuShips has initiated action (Sept./Oct. 1961) to belatedly ratify or legalize, *a previously accomplished personnel action*, by instructing the Naval shipyards to submit a new position description for the currently misassigned Group Master positions. The BuShips has not, as would be logical, instructed the activities to concurrently prepare a new position description for the presently misassigned, Head Of Shop positions. Possibly BuShips does not want position sheets for the two positions available for direct comparison, as such a comparison would readily illustrate the full extent of the actual differences between the two new positions, and further substantiate my appeal action. Possibly this is an Administrative procedure designed by BuShips to allow them to attempt to claim that the belated legalization of only the new title and position of Group Master would have the result of removing

the Group Master position from my competitive level, thus BuShips would attempt to claim that I did not have any rights to the position, when my reduction-in-rank is finally confirmed.

(22) My appeal action is based on the conditions and policies in existence and in effect on the day my *previously accomplished actual position change was placed in full, complete and immediate effect, by formal written order of the Shipyard Commander 1 Feb. 1961. Any subsequent appeal will also be on this basis.*

(23) Court decisions have established that the policies of an agency that are in effect, at the time an action is placed in effect, are binding on the agency. Accordingly, the NCPI's that were in effect on 1 Feb. 1961, *and not the many changes that have been initiated since the filing of my appeal*, will be binding in this appeal.

(24) Court decisions have established that Preference Eligibles that occupy positions that are not covered by the Classification Act, are entitled to the same protection that Preference Eligibles that occupy positions that are covered by the Classification Act, are entitled to, under the *provisions, intent and purpose of the Veterans' Preference Act.*

(25) Navy documents state that a position of an employee consists *officially* of what higher authority *claims* is assigned to it, it *actually* consists of the duties and responsibilities discharged by the employee. Should the *actual* duties and responsibilities differ from those *Officially* prescribed for the position, higher authority should initiate appropriate action to eliminate the difference. *Failure to do so constitutes a misassignment and misassignments are contrary to law and Civil Service Commission Regulations.* The foregoing is an apt summation of what has happened to my former position, in that it is *officially claimed* that my duties are the same to attempt to disguise the fact that my *actual* duties have been drastically reduced, and that *no action* has been initiated to correct this condition, *except my appeal action.*

(26) The Navy Dept. states that when an employee allows his position to erode or deteriorate to a point where down-grading becomes necessary, such employee is not then

protected by Retention Preference Regulations. My appeal action is notice that I have not allowed my position to erode; my position has eroded over and despite, my continued, urgent, detailed, substantiated, established, documented, ineffectual, and ignored protests to the Commission.

(27) It is fully recognized that BuShips and the activities have the authority to implement any program that they deem to be in the best interests of the Navy Dept.; however, it is also recognized that, concurrent with such authority they also must exercise the responsibility to insure that such programs are implemented in accordance with law, Civil Service Regulations, and their own "Rules of the Road", the Naval Civilian Personnel Instructions. This implementation could have been properly accomplished by the use of STANDARD PERSONNEL procedures, but for reasons known only to the Navy Dept., this was not done. The Navy Dept., instead, after devoting intensive study and effort for a period of over three years, at a very high management level (the Bureau level) decided that it was best implemented by the adoption of, in my opinion, a series of illegal and/or improper administrative actions. Since this course of action was decided after intensive and prolonged high level, planning, I believe it is a reasonable assumption that the decision to implement the Program by this series of illegal and/or improper procedures must have been both deliberate and premeditated. The present method of implementation has, in my opinion, allowed the Navy Dept. to circumvent the requirements of the Veterans' Preference Act, the Reduction-in-Force Regulations, and their own Naval Civilian Personnel Instructions. This evasion of these laws, etc., have given the Navy Dept. a much greater degree of latitude in placing the specific individuals they want in these positions.

(28) NCPI 352.4-2 reads, in part; "as used in (3) above 'Reorganization', means the planned, elimination, addition, or redistribution of *functions* and duties *within an organization*. Thus, the reduction-in-force system will govern any adverse action brought about by deliberate management action to change official duties previously assigned,

where the reasons are impersonal to the effected employee. This applies to unpublicized changes made by a supervisor affecting one or more positions under his control, as well as changes resulting from formal reorganization orders affecting complete organizations". The reduction-in-force system was not applied to my actual position change.

(29) The following quotation is from the Navy Dept. publication, "Position Classification Handbook." This handbook in part states: "The ranking method—value of importance is determined by difficulty and responsibility of work—. This system has logic and simplicity. It is interesting to note that in some sense, ranking must be used in all systems". My actual position change, by eliminating areas of authority formerly vested in my position as Master Shipfitter in full charge of Shops 11/26, has exercised adverse effect on my rank.

(30) The provisions, intent and purpose of Section 12 of the Veterans' Preference Act, the provisions of the following NCPI's, in accordance with the policy established by the Department of Defense, (NCPI 351.9-4b) (351.9-4c-1) (351.9-4d-1) provide that: When the functions of a position are transferred to another position, an offer to follow the functions must be extended to all Retention Group I, II & III employees identified with the transferred functions. When my position was actually changed on 1 Feb. 1961, this was not done. I contend that this was an adverse action and in violation of Section 12 of the Veterans' Preference Act, etc.

(31) The Veterans' Preference Act, Section 14 states that a veteran *shall not be reduced-in-rank*. It does not state that a loss in pay or compensation is a prerequisite to a reduction-in-rank. It does not state that the use of any special or informal means can be used to effect a reduction-in-rank, to attempt to successfully nullify the Act. It only states unequivocally that a veteran *shall not be reduced in rank*. It is my contention that my actual position change, with all of the attendant enumerated losses that have been previously documented to the Commission, has resulted in my being reduced-in-rank. I have documented

the drastic losses from my former position in all areas that could conceivably affect rank, except pay and seniority.

The Regional decision states that the Commission has previously issued decisions that particular position changes constituted reductions in rank where there was no loss of grade or salary involved, in such cases the Commission has found that there was a functional and substantial lessening of the "rank" of the position to which changed with the relation to other positions in the immediate area of the supervisory relationship. I have previously substantiated and Exhibit "gggg" conclusively established that I have, by designation as Head of Shop, suffered a functional and substantial lessening of "rank" in relation to many other supervisory positions in the immediate area, in that I am now subordinate to numerous individuals illegally mis-assigned to perform the duties of Group Master and I was prior to my designation as Head of Shop, at least their equal in rank in every respect, and *further was at that time performing all of the duties now performed by a Group Master position.*

It is my contention that I have been the victim of an adverse action that has resulted in my reduction-in-rank in violation of the *provisions, intent and purpose* of the Veterans' Preference Act, Section 14.

(31) The following is a listing of some of the areas in which the Navy Dept. has, in my opinion, acted illegally and/or improperly in its current method of implementing the BuShips Shop Grouping Reorganization Program, in concurrent violation of the Veterans' Preference Act, and in additional violation of Civil Service Regulations, and the NCPI.

a. Position changes initiated due to planned reorganization must be in accordance with R. I. F. procedures, NCPI 351.2-3; 2-5e; 2-5q; 4-2b; 9-4bc; and NCPI 352.4-1; 4-2a; c, e; 4.4a, b; 5-6a, b.

b. New IVa Supervisory rating cannot be properly established unless the requirements of NCPI 310.2-2, 310.2-2b, 531-3-3a, 531.3-4a, b, c, d, n, j; 531-36, and 531, En-

closure 21, are complied with, and this has not been done to date.

c. The entire program to date, 12/15/61, has been implemented by extensive and long time use (over two years) of Misassignments, and Misassignments are contrary to law, Civil Service Regulations and Naval Civilian Personnel Instruction 512.7.

d. Proper and required standard personnel action forms have not been issued to the affected individuals to reflect the new duties and status. Under the present conditions, the officially claimed and actually performed duties and status of the positions are vastly different.

e. The actions are not consistent with the policy of Naval Civilian Personnel Instruction 211.2-1, 211.3-1, 3-2.

f. Despite the wide extent and frequency of these violations; despite the responsible agencies long time previous knowledge of these violations; the agencies that are charged with the responsibility to correct such conditions, to my knowledge have not done so, since they still exist, and neither have they, to my knowledge, initiated any action relative to the immediate or future correction of these violations. The responsible agencies are apparently ignoring their duty and responsibility to properly exercise their authority and correct these violations. The only attempted corrective action, to date, to my knowledge is the appeal actions of several individuals to the Commission.

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Mass.

Filed May 14, 1963

GOVERNMENT'S EXHIBIT No. 1

C. A. No. 3293-62

I, Mary V. Wenzel, Executive Assistant to the Commissioners, United States Civil Service Commission, certify that the documents attached hereto relate to the appeal of Francis J. Dugan, filed with the Commission under Section 14 of the Veterans' Preference Act of 1944, as amended, and are true copies of official documents under my custody and control.

MARY V. WENZEL,
Executive Assistant to the Commissioners.

Washington, D. C., January 8, 1963.

Enclosures

1. November 30, 1960 —Letter to Dugan from Brockett re selection of Simon.
2. February 1, 1961 —Letter to Dugan from Brockett re subordination to Simon.
3. February 6, 1961 —Appeal to First Civil Service Region by Dugan.
4. February 7, 1961 —Letter to Boston Naval Shipyard from First Civil Service Region.
5. February 10, 1961 —Letter to Brockett from Dugan re appeal.
6. February 23, 1961 —Letter to First Civil Service Region from Brockett—Enclosure, five charts.
7. March 20, 1961 —Letter to First Civil Service Region from Dugan.
8. March 29, 1961 —Letter to Dugan from Healey.
9. April 19, 1961 —Letter to Grossman from Dugan.
10. April 26, 1961 —Letter to Grossman from Dugan.

Enclosures

11. May 3, 1961 —Decision of First Civil Service Region.
12. May 10, 1961 —Appeal to Civil Service Commission.
13. May 22, 1961 —Letter to Dugan from Blann.
14. May 29, 1961 —Letter to BAR from Dugan.
15. June 14, 1961 —Letter to BAR from Brockett.
16. June 21, 1961 —Letter to Dugan from Groark.
17. June 26, 1961 —Letter to BAR from Dugan.
18. July 17, 1961 —Letter to BAR from Dugan.
19. August 2, 1961 —Letter to CO, Boston Shipyard, from Groark.
20. August 17, 1961 —Letter to Groark from Brockett.
21. September 12, 1961 —Letter to BAR from Dugan.
22. September 21, 1961 —Letter to Dugan from Groark.
23. October 6, 1961 —Letter to BAR from Dugan.
24. October 27, 1961 —BAR Decision (CSC jurisdiction denied)
25. November 7, 1961 —Letter to BAR from Dugan.
26. November 8, 1961 —Letter to BAR from Dugan.
27. December 26, 1961 —Letter to Macy from Dugan, with two enclosures.
28. January 27, 1962 —Letter to Macy from Dugan, with two enclosures.
29. February 16, 1962 —Letter to Dugan from Wenzel: Request for reopening denied.

BOSTON NAVAL SHIPYARD
Boston 29, Mass.

(100)
LL/Dugan, F. J.

30 November 1960.

Mr. Francis J. Dugan,
Master, Shops 11/26,
Production Department,
Boston Naval Shipyard,
Boston 29, Massachusetts.

Dear Mr. Dugan:

Shops 11/26 and 17 are to be brought together under a Group Head in accordance with the Shipyard reorganization plan recently approved by the Bureau of Ships. These shops comprise what will be known as the Structural Group.

Mr. F. J. Simon, Master Sheetmetal Worker, has been selected to head the Structural Group. Pending my approval of an organizational plan for your Group, which Mr. Simon has been requested to prepare in response to the objectives of the overall grouping program, you will continue to direct the affairs of your shop as heretofore.

I am confident you will give Mr. Simon all the support and assistance he will need to develop the very best organizational and operational plan possible.

Sincerely,

W. A. BROCKETT,
Captain, USN,
Commander.

BOSTON NAVAL SHIPYARD
Boston 29, Mass.

(100)
LL/Dugan, F. J.

February 1, 1961.

Mr. Francis J. Dugan,
Master, Shops 11/26,
Production Department,
Boston Naval Shipyard,
Boston 29, Massachusetts.

Dear Mr. Dugan:

By my letter to you of 30 November 1960 you were advised of the grouping of Shops 11/26 and 17 and of Mr. Simon's selection as Group Master, and that you were to continue to direct the affairs of your shop as heretofore, pending my approval of an organizational plan for the shop group.

The organizational plan for your shop group has been submitted and generally approved. Accordingly, as of this date Mr. Simon has been given full authority to implement the plan as approved, and has been assigned full responsibility for over-all policy, administration and operation of all shops included in his group.

As head of Shops 11/26, you will report directly to and will be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops, and for such other additional duties as he may assign in connection with the over-all shop grouping plan. In my considered opinion shop grouping offers many opportunities for improving our operations and enhancing the effectiveness of the support which we furnish the Fleet. I am sure that I can count on you to continue to give the plan and Mr. Simon your wholehearted and unfailing support and cooperation.

Sincerely,

W. A. BROCKETT,
Captain, USN,
Commander.

Copy to: Group Master, 300, 150.

BOSTON NAVAL SHIPYARD

6 February 1961.

MEMORANDUM

To: Director, Civil Service Commission, First U.S. Civil Service Regional Office, Post Office and Courthouse Building, Boston, Massachusetts.

From: F. J. Dugan, Master Shipfitter, Boston Naval Shipyard.

Subj: Appeal from an adverse action.

Ref: (a) N.C.P.I. 352.4-4.

(b) N.C.P.I. 352.5-4 (1) b—Notice.

(c) N.C.P.I. 352.5-4 (1) c.

(d) Letter from Cmdr. Boston Naval Shipyard to F. J. Dugan, dated 30 November 1960.

(e) Letter from Cmdr. Boston Naval Shipyard to F. J. Dugan, dated 1 February 1961.

1. The subject matter of reference (d) refers to the grouping of Shops 11/26 and 17 and refers to Mr. Simon as Group Master. It further states that as of this date, 1 February 1961, I will report directly to and will be accountable to Mr. Simon for many matters that previous to 1 February 1961 I reported directly to and was accountable for to the Production Officer.

2. This action constitutes a reduction in rank in that I, as Master Shipfitter, have in effect moved down one level in the Senior Supervisory level. (N.C.P.I. 352.4-4 (b) 1.). The level of supervision to which I now report has been lowered. (N.C.P.I. 352.4-4 (b) 2.). The above statements are supported by the fact whereas I reported directly to the Production Officer, I now report to Mr. F. J. Simon, in paragraph 1 above, in his capacity of Group Master, who in turn reports directly to the Production Officer.

3. The provisions of reference (b), N.C.P.I. 352.5-4 (1) b, section entitled Notice, were not met. Specifically, the requirements as stated by this N.C.P.I. 352.5-4 (1) b, section entitled Notice, and including items 1, 2, 3, 4, 5 and 6 listed under section entitled Notice were not fulfilled. In regard to the provisions of this section, reference (b), N.C.P.I.

352.5-4 (1) b. Notice, no proper adequate notice was given, no reason stipulating the purpose of action recorded. Indeed, the letter (reference e) implies that I have not been adversely affected in anyway whatsoever and that the action specified is in effect as of 1 February 1961 and that I as an individual have no appeal.

4. The provisions of N.C.P.I. 352.5-4 (1) c were not met in this action.

5. The provisions of N.C.P.I. 352.5-6 were not fulfilled in this action.

6. For the record, this letter is my formal appeal from an adverse action seriously affecting my present and possibly future interests. This letter seeks to protect my rights so that as this Proposed Reorganization proceeds I may not be deemed guilty of the Defense of Laches (the failure of exercising my legal rights within a proper time period).

7. The effect and nature of this adverse action is continuing and, as the letter (reference e) indicates, additional action will result that may evolve to my further disadvantage. This letter, then, alerts the Civil Service Commission to my concern and is my guarantee that I intend to stress my complete dissatisfaction with what, from the facts outlined, can only be construed as a somewhat arbitrary action.

8. Since the basis of this action is taken under Part 22 of the Civil Service Regulations (Section 14 of the Veterans Preference Act of 1944), these are the facts that you should know. I was voluntarily inducted into the Army of the U.S. Air Corps, on 28 July 1943. I reported for active service on 11 August 1943, attained the grade of Corporal, and I was honorably discharged on 15 December 1945.

9. In regard to this appeal, I wish to appear personally before Commission Representatives, accompanied by the allowable number of representatives of my choice, in order to elaborate and clarify to the Commission proof of my allegations.

F. J. DUGAN, #11-11980,
Master Shipfitter, Shops 11-26,
Boston Naval Shipyard.

HG:emb

February 7, 1961.

Commander,
Boston Naval Shipyard,
Boston, Massachusetts.

Attention of Industrial Relations Officer

Dear Sir:

Mr. Francis J. Dugan of 347 Dutton Road, Sudbury, Massachusetts, has filed an appeal with this office under Section 14 of the Veterans' Preference Act of 1944 alleging that he has been reduced in rank by the Shipyard Commander.

The basis of Mr. Dugan's appeal is the establishment of a position of Group Master, Structural Group, over the position of Mr. Dugan.

In order that we may determine whether Mr. Dugan's appeal falls within the purview of Section 14 of the Veterans' Preference Act of 1944, it is respectfully requested that you furnish us with the details of any changes in the organizational structure of the Production Department with reference to Mr. Dugan's position as Master of Shops 11 and 26.

An early reply will be deeply appreciated.

Sincerely yours,

RICHARD J. HEALY,
Regional Director.

BOSTON NAVAL SHIPYARD

10 February 1961.

MEMORANDUM

From: F. J. Dugan, Master Shipfitter
 To: W. A. Brockett, Shipyard Commander
 Via: E. J. Simon, Group Master, Structural Group
 E. A. Grantham, Production Officer
 Subj: Adverse action, appeal of

1. This memorandum is to inform you that I have submitted an appeal to the Civil Service Commission, First Regional Office, in connection with your letter, dated 1 February 1961, in which I am designated as Head of Shops 11/26.

2. This action was submitted as a Veterans Preference eligible to the Civil Service Commission under Part 22 of the Civil Service Regulations (Section 14 of the Veterans Preference Act of 1944).

3. It is my contention that my designation as Head of Shops 11/26 constitutes an adverse action against me.

4. I have notified the Civil Service Commission that I wish to appear personally before Commission Representatives, accompanied by the allowable number of representatives of my choice, in order to elaborate and clarify to the Commission proof of my allegation.

F. J. DUGAN.

BOSTON NAVAL SHIPYARD
Boston 29, Mass.

(160)
LL/Dugan, F. J.

February 23, 1961.

Regional Director,
First U. S. Civil Service Region,
Post Office and Courthouse Building,
Boston, Massachusetts.

Dear Sir:

In compliance with your letter of 7 February 1961, the details concerning changes in the organizational structure of the Production Department with reference to the position of Mr. Francis J. Dugan, Master of Shops 11 and 26, are presented herewith.

Mr. Dugan is one of eight shop masters similarly affected by alignment of Shipyard shops into predesignated groups in accordance with the policy and plans set down in Bureau of Ships Instruction 5450.94 of 8 January 1960. The Bureau of Ships objective was to realign the some fifteen individual shops in each of the Naval shipyards into more compact groupings relating to trade functions and coordination requirements. In Boston, with the exception of two manufacturing facilities, this plan resulted in five major groups of shops.

Each of the five major groups is headed by a group master whose responsibilities have increased in scope by delegation of responsibilities formally held by the Production Officer to whom they report. Each shop retains its individual identity. Each shop master retains the same responsibility and authority of functions which his shop continues to perform.

Relating specifically to Mr. Dugan are enclosures describing the organization as it existed prior to shop groupings and as it now exists. It will be noted that the functional

responsibility and authority of the Master of Shops 11 and 26 are identical in both organizations. It will be noted further that the additional functional responsibilities and authority of the group master are extracted directly from those of the Production Officer; thus the group master serves as alter ego to the Production Officer relieving the Production Officer of duties depicted in the organization charts.

The Master of the Structural Group to whom Mr. Dugan reports holds the rating of Master Sheetmetal Worker and draws a salary of \$13,104 per annum. Mr. Dugan, as head of Shops 11 and 26, continues to hold the rating of Master Shipfitter and continues to draw a salary of \$13,104 per annum. The Group Master bears the primary responsibility for administration and functioning of the Sheetmetal Shop, plus the additional functions assigned him by delegation of responsibility previously vested in the Production Officer.

Apropos the above is the basic concept underlining the grouping of production shops in Naval activities. This concept relates specifically to better physical coordination of work by the trades with particular reference to work conducted on ships on the water front. The organization under which these production functions had been performed in the past did not lend itself to closer control of coordination necessary to accomplish more effectively the modern day mission of Naval shipyards. The coordination desired could have been achieved by delegation of Production Officer responsibilities to additional Naval personnel to whom shop masters would report. This likewise would have had no affect on the rank of shop masters.

This Shipyard holds to the position that a reduction in rank cannot exist solely on the basis that a level of reporting authority is injected between organizational levels. The ultimate test should be applied to the elements forming the basis of rank. The elements as they relate to Mr. Dugan's position are: responsibility, authority, function, status, seniority, and pay. These remain unchanged, Mr. Dugan's

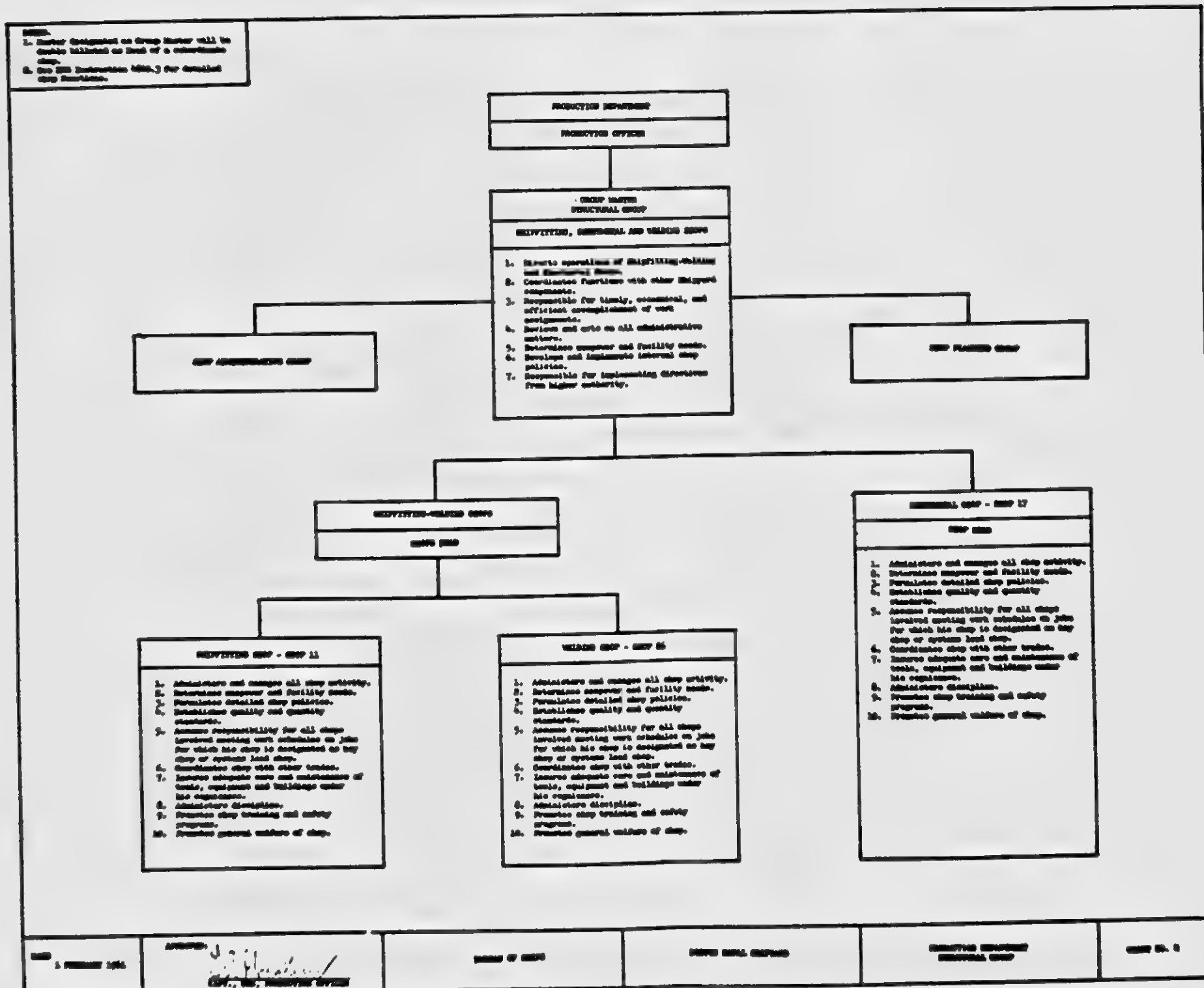
assignment remains unchanged, and the functions of the shops over which he exercises administrative control remain unchanged.

Sincerely yours,

W. A. BROCKETT,
Captain, USN,
Commander.

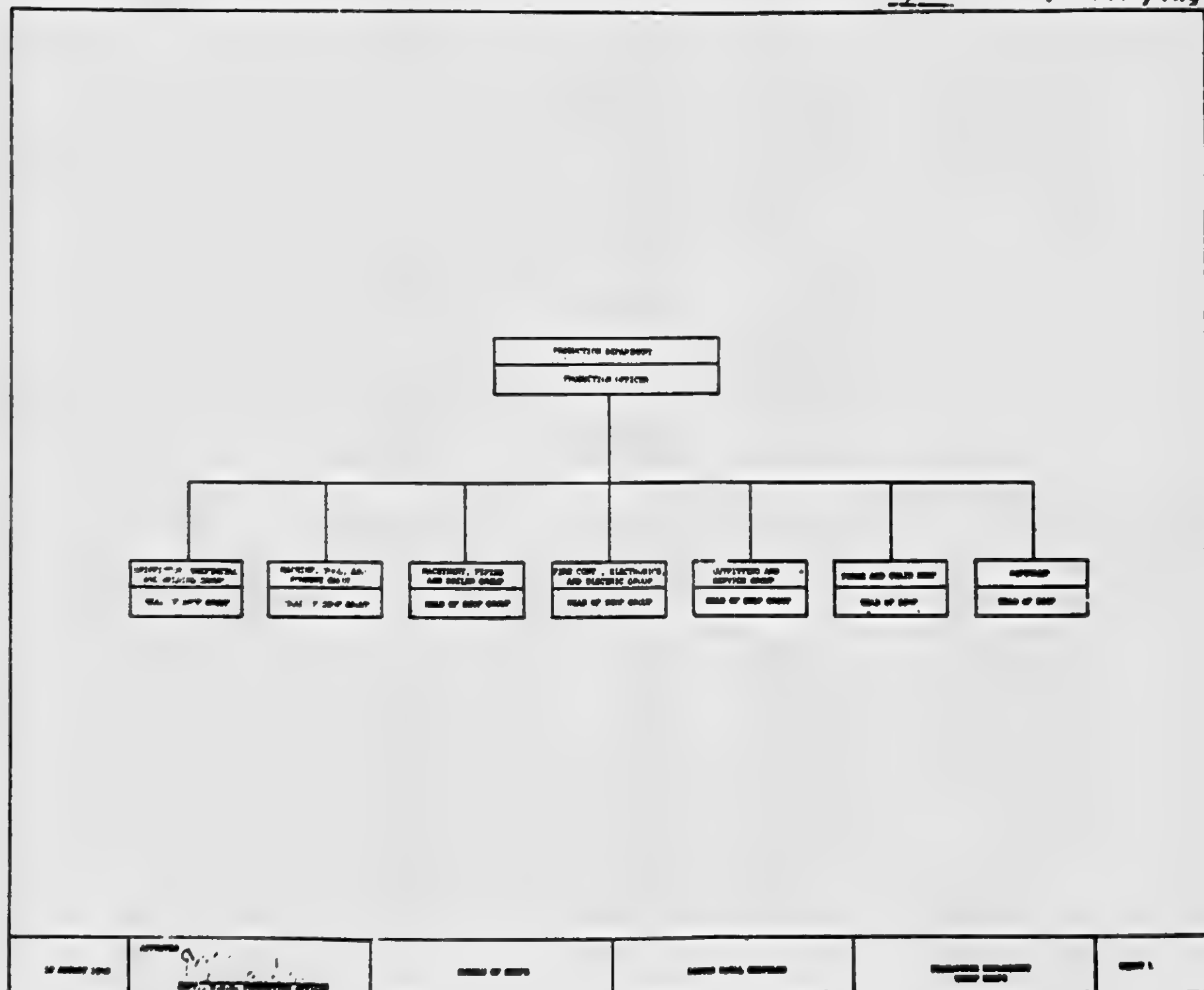
Encl:

- (1) Production Department
- Organization Charts (5)

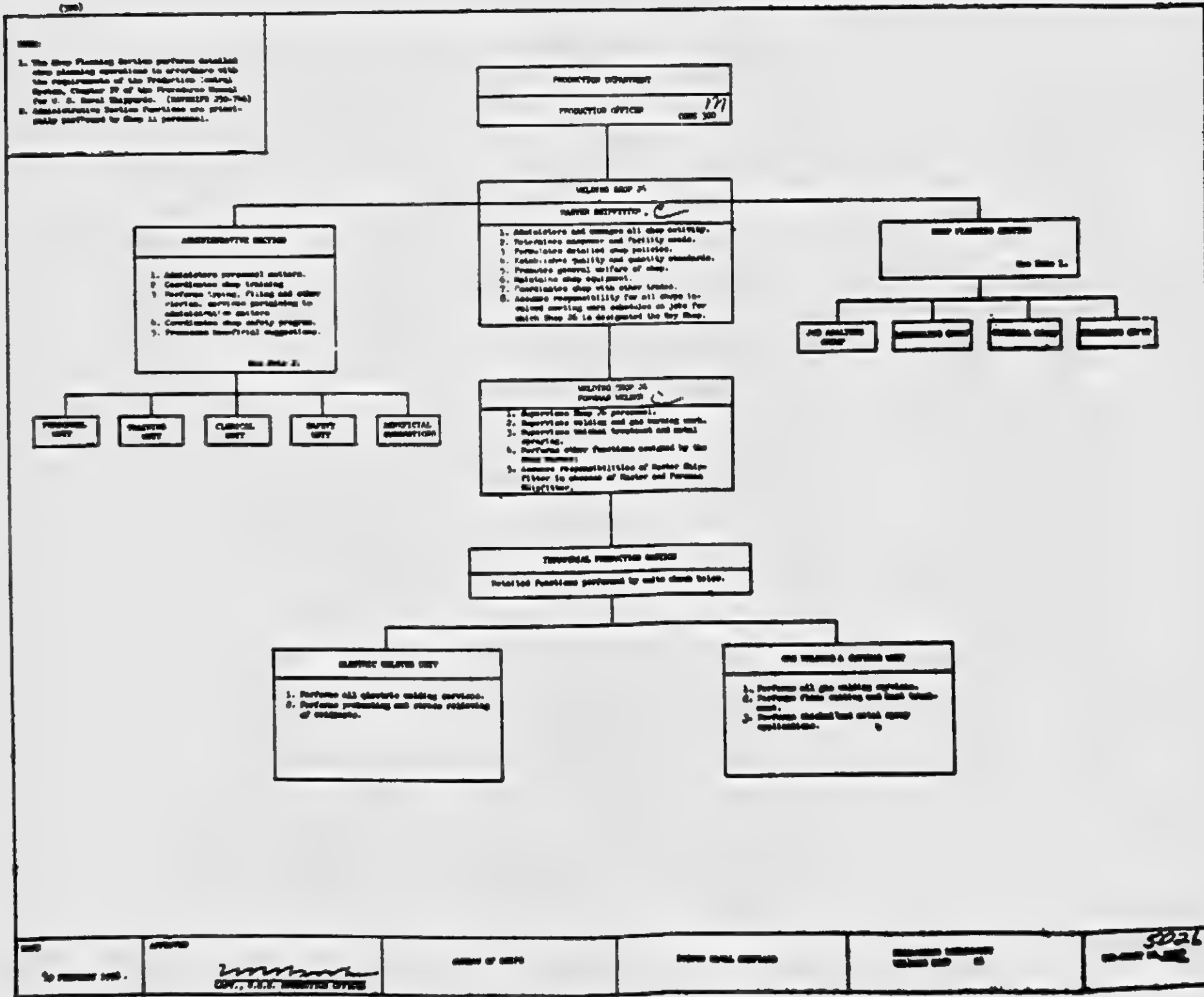


After Choi Grouping

186



BEST COPY AVAILABLE
from the original bound volume









20 March 1961.

Director,
U.S. Civil Service Commission,
First U.S. Regional Office,
Post Office & Courthouse Building,
Boston, Massachusetts.

Subj: Appeal from Adverse Action; Delay of
Ref: U.S. CIVIL SERVICE COMMISSION lettr to F. J. DUGAN of
7 Feb 1961, file HG:emb

1. I will appreciate any information you may forward to me relative to the cause of what appears to me to be an excessive and unreasonable delay in establishing a hearing date to afford me an opportunity to process my appeal action.

2. It is my understanding that previous appeal actions, similar to mine, have been resolved and a decision rendered by the Commission in approximately a two week period from initial date of filing appeal action.

3. I will appreciate your forwarding to me the answers to the following inquiries:

(a) What is the number of representatives I am allowed to have at my hearing?

(b) Am I allowed to have a private attorney as one of these?

(c) What is the number of Advisors I am allowed to have at my hearing?

(d) Am I allowed to have a private attorney as one of these?

(e) What is the number of Observers I am allowed to have at my hearing?

(f) Will you kindly inform me of any other restrictions applying to Representatives, Advisors, or Observers in relation to the hearing on my appeal?

FRANCIS J. DUGAN,
Master Shipfitter, Bldg. #104,
Boston Naval Shipyard,
347 Dutton Road,
Sudbury, Massachusetts.

March 29, 1961.

Mr. Francis J. Dugan,
347 Dutton Road,
Sudbury, Mass.

Dear Mr. Dugan:

This refers to your letter of March 20, 1961, regarding your appeal filed with this office, dated February 6, 1961.

A hearing is held by this office in an appeal under Section 14 of the Veterans' Preference Act of 1944 after it has been determined from a preliminary review that there was in fact an adverse action effected, and the appeal has been timely filed. Of course, in your case it is clear that your appeal was timely filed. Unless and until it is determined that there has been a reduction in rank, this office has no jurisdiction to review the action appealed. Should it be determined that there was a reduction in rank, than of course the action would have to be disapproved because the procedural requirements of Section 14 of the Veterans Preference Act regarding advance written notice, opportunity to answer personally and in writing, etc., were not followed. This would still be considered part of the preliminary review, and no hearing would be scheduled. As a matter of general information, hearings held by this office under Section 14 of the Veterans Preference Act are open only to the parties and other persons having a direct interest in the matter. The employee is entitled to have a representative and to produce any witnesses he desires to have present. He may, if he wishes, have counsel to assist him or his representative but only his designated representative may act as such.

We have received a telephone call from Mr. Tieso regarding your appeal, as a result of which an appointment has been scheduled for you and Mr. Tieso to come into our office and discuss your case with our Appeals Examiner, Mr. Harry Grossman, in Room 1040 on Wednesday, April 5

at 2:00 p.m. . If you should not be able to keep this appointment, please get in touch with Mr. Grossman and arrange for another date.

Sincerely yours,

RICHARD J. HEALEY,
Regional Director.

cc: Mr. Anthony D. Tieso, 198 Manchester Street, Mattapan, Massachusetts.

April 1961.

From: Francis J. Dugan, Master Shipfitter, Check No.
11 11980 Boston Naval Shipyard
To: Harry Grossman, Appeals Examiner, Civil Service
Commission
1st Civil Service District, Room 1040,
Federal Building,
Boston, Massachusetts.
Subj: Additional information pertinent to Section 14 Veterans Appeal dealing with alleged reduction in rank initiated by Mr. Dugan upon implementation of Group Masters.

1. Additional information has come to our attention that is of sufficient moment, in our opinion, to merit forwarding you, to enable you to complete your findings upon the fully developed facts. These data will serve to prove, beyond a reasonable doubt, that the Shipyard Commander's contention that all duties added to the position of Group Master were ceded from the Production Officer is not tenable.

2. Again, at this time, I would like to assure you of our willingness to co-operate, in order that you might reach a sound conclusion on this matter; and to this end, indicate that if the presence of myself, Francis J. Dugan, my representative, Mr. Anthony D. Tieso, and my advisor, Mr. William K. L. Breeden, could in any way serve to clarify any of the submitted documentary evidence any or all of us would welcome the opportunity to meet with you in this matter.

With kindest Regards,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

26 April 1961.

From: Francis J. Dugan, Master Shipfitter, Check No. 11
11980, Boston Naval Shipyard
To: Harry Grossman, Appeals Examiner, Civil Service
Commission, Room 1040,
Federal Building
Boston, Massachusetts
Subj: Additional information pertinent to Section 14
Veterans Appeal dealing with alleged reduction
in rank initiated by Mr. Dugan upon implementa-
tion of Group Masters

1. Subsequent to my letter to you, dated 18 April 1961, additional information has come to our attention that is of sufficient moment, in our opinion, to merit forwarding you, to enable you to complete your findings upon the fully developed facts. These data will serve to prove, beyond a reasonable doubt, that the Shipyard Commander's contention that all duties added to the position of Group Master were ceded from the Production Officer is not tenable. Exhibit "www", enclosed, states clearly and unmistakably that the duties added to the Group Master position were added by the reassignment of functions previously existing among the former Masters positions within and at the shop level.

2. The contention advanced by the Shipyard, that the Group Master position was created by the transfer of functions from the Production Officer's position, to the best of my knowledge, was not advanced by the Navy, except subsequent to and as a direct result of my appeal action, and the necessity of answering the Commission's inquiry. In our opinion, this theory was then advanced in an attempt to offer some measure of justification for a series of improper and illegal administrative actions, previously consummated in violation of law, Commission Regulations and NCPI's. Since the position of Production Officer was and is the only other position that could have conceivably been involved in the transfer of functions between the affected position, in our opinion, the Navy Department was, of necessity, forced to make this unsupported, undocumented, completely untenable pseudo-assertion. We are convinced

that research by the Commission will clearly substantiate and establish that not *one* of the directives, memos, letters, bulletins, or any other communication issued by the Navy Department, or any of its activities, previous to my appeal action, hint, imply, infer or state in any way that functions were intended to be transferred from the Production Officer's position to create the position of Group Master.

3. This program was the result of over three years of intensive study by BuShips as to the manner of implementation, yet not once was the theory mentioned in documents available to interested civilian personnel indicating that the Production Officer was to lose authority, responsibility and functions to the Group Master position. I file an appeal action, the Commission makes an inquiry, and these two simple actions become the catalyst that effect an instantaneous transformation in the implementation of a program developed by over three years of intensive study and effort of very high level Navy Department management officials; and we now find that while all previous documents, etc., issued by the Navy Department and its activities, substantiate and establish that the functions gained by the Group Master were to come from those existing within the shops, the simple catalyst of appeal and inquiry, in our opinion, has had the remarkable and extremely rare result of placing the Navy Department in the position of maintaining that they are transferring functions from the position of Production Officer to create a lower level position and, in effect, that they are *intentionally* down-grading a high level military officer billet.

4. Again, at this time, I would like to assure you of our willingness to cooperate, in order that you might reach a sound conclusion on this matter; and to this end, indicate that if the presence of myself, Francis J. Dugan, my representative, Mr. Anthony D. Tieso, and my advisor, Mr. William K. L. Breeden, could in any way serve to clarify any of the submitted documentary evidence, any or all of us would welcome the opportunity to meet with you in this matter.

With Kindest Regards,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

UNITED STATES CIVIL SERVICE COMMISSION
 FIRST UNITED STATES CIVIL SERVICE REGION
 Comprising Connecticut, Maine, Massachusetts,
 New Hampshire, Rhode Island, and Vermont
 Office of the Director, Boston 9, Mass.

HG:emb

May 3, 1961.

Mr. Francis J. Dugan,
 347 Dutton Road,
 Sudbury, Mass.

Appeal of:	Mr. Francis J. Dugan
Action Appealed:	Alleged Reduction in Rank effected 2-1-61
Employing Agency:	Boston Naval Shipyard
Decision:	Not within the purview of the Veterans' Preference Act of 1944.

Dear Sir:

There is transmitted herewith a copy of the findings and recommendation, ~~together with a transcript of the hearing,~~ in the Section 14 Veterans' Preference Act appeal described above.

Sincerely yours,

JBD

RICHARD J. HEALEY,
Acting Regional Director.

cc: Anthony Tieso, 198 Manchester St., Mattapan, Mass.

Enclosure

USCSC-1st Reg.
 Boston, Mass.

1AD-44 Rev.
 Jan. 1960

UNITED STATES CIVIL SERVICE COMMISSION
FIRST UNITED STATES CIVIL SERVICE REGION
Post Office and Courthouse Building
Boston, Massachusetts

APPEAL OF FRANCIS J. DUGAN UNDER SECTION 14 OF THE
VETERANS' PREFERENCE ACT OF 1944, AS AMENDED

PART I. INTRODUCTION

Date of Appeal: February 6, 1961
Appellant: Francis J. Dugan, 347 Dutton Road,
Sudbury, Mass.
Agency: Boston Naval Shipyard, Boston, Mass.
Action: Alleged reduction in rank effected
February 1, 1961.

PART II. BASIS FOR ACCEPTANCE OF APPEAL

We established that Mr. Dugan is a preference eligible employee who completed a trial or probationary period under the prescribed type of appointment, thereby entitling him to the provisions of Section 14 of the Veterans' Preference Act of 1944 and Part 22 of the Civil Service Commission Regulations which apply to "reduction in rank". Mr. Dugan's appeal was filed with us on February 7, 1961 and therefore was filed within the ten-day period provided by Civil Service Regulation 22.302 from the effective date of the alleged adverse action. Jurisdiction was therefore assumed for the sole purpose of ascertaining whether the Shipyard effected a reduction in rank within the purview of Section 14 of the Veterans' Preference Act and Civil Service Regulation in Part 22.

PART III. EXAMINATION OF PROCEDURES

The Boston Naval Shipyard, admittedly, did not issue Mr. Dugan a 30-day advance written notice of proposed adverse action with reasons specifically and in detail and did not give him any opportunity to answer, etc., as Section 14 of the Veterans' Preference Act of 1944 requires. The

Shipyard's position rather was that no such adverse action was effected, and no change in Mr. Dugan's position or rank has been made.

PART IV. THE ISSUES AND ANALYSES OF THE EVIDENCE

Mr. Dugan is and has been the Master Shipfitter of the Boston Naval Shipyard. In this position, he is and has been the ranking civilian official in the Shipfitter Shop, Shop 11 and the Welding Shop, Shop 26. Prior to February 1, 1961, his immediate superior was the Production Officer who was the highest responsible official in the Production Department. The Production Officer's span of Control included and still includes (1) An Administrative Division, (2) A Quality Control Division, (3) A Production Engineering Division, (4) The Production Shops, (5) A Shipbuilding Division and (6) A Repair Division. The Production Shops included those which Mr. Dugan headed and still heads, and also others, such as the Blacksmith Shop, Pipe Shop, Sheet Metal Shop, Machine Shop, Electrical Shop, Woodworking Shop, etc. In every shop where there was a Master, he was directly under the Production Officer's span of control. In August 1960, the Production Department underwent a reorganization whereby "Shop Groups" were established by related trades and occupations. For example, the Shipfitter, Welding and Sheet Metal trades and shops were grouped together, the Machine, Tool and Foundry trades and shops were grouped together, the Machinery, Piping and Boiler trades and shops, etc. All told there were five groups set up with only the Forge and Chain Shop and the Ropewalks left remaining outside a group. (These are comparatively small and unique activities).

On November 30, 1960, the Shipyard Commander wrote to Mr. Dugan in part as follows:

"Shops 11/26 and 17 (Shipfitter, Welding and Sheet Metal) are to be brought together under Group Head in accordance with the Shipyard reorganization plan recently approved by the Bureau of Ships. These shops comprise what will be known as the Structural Group.

"Mr. F. J. Simon, Master Sheetmetal Worker, has been selected to head the Structural Group. Pending my approval of an organizational plan for your Group, which Mr. Simon has been requested to prepare in response to the objectives of the overall grouping program, you will continue to direct the affairs of your shop as heretofore."

On February 1, 1961, the Shipyard Commander wrote another letter to Mr. Dugan. This read:

"By my letter to you of 30 November 1960 you were advised of the grouping of Shops 11/26 and 17 and of Mr. Simon's selection as Group Master, and that you were to continue to direct the affairs of your shop as heretofore, pending my approval of an organizational plan for the shop group.

"The organizational plan for your shop group has been submitted and generally approved. Accordingly, as of this date Mr. Simon has been given full authority to implement the plan as approved, and has been assigned full responsibility for over-all policy, administration and operation of all shops included in this group.

"As head of Shops 11/26, you will report directly to and will be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops, and for such other additional duties as he may assign in connection with the over-all shop grouping plan. In my considered opinion shop grouping offers many opportunities for improving our operations and enhancing the effectiveness of the support which we furnish the Fleet. I am sure that I can count on you to continue to give the plan and Mr. Simon your wholehearted and unfailing support and cooperation."

In his appeal to us, Mr. Dugan submitted that he, as Master Shipfitter, has in effect moved down one level in the Senior Supervisory level. He cited Naval Civilian Personnel Instruction 352.4-4 (b) (1) and (2). He stated

that the level of supervision to which he now reports has been lowered, that whereas he reported directly to the Production Officer, he now reports to Mr. F. J. Simon, in his capacity of Group Master, who in turn reports directly to the Production Officer.

Mr. Dugan presented a volume of material to us in support of his claim. Among this material were documents which showed that a considerable number and variety of the responsibilities and authority which he had exercised as Master of Shops 11 and 26 before these shops were grouped with the Sheet Metal Shop and a Group Master designated, are now exercised by the Group Master, and documents which establish that as present Shop Masters in Naval Shipyard leave through resignation, retirement, death, etc., they will be succeeded by Foremen which is admittedly a lower Navy Department Group IV-A rating than Master. In fact this has already occurred in other Naval Shipyards.

By way of background, the reorganization policy and plans were announced by the Bureau of Ships in BUSHIPS INSTRUCTION 5450.94, dated January 8, 1960. The announced purpose was to carry out a recommendation to reduce overhead costs by grouping shops in the Production Department, of which there were approximately 15 in each Naval Shipyard and most of which were supervised by an individual trade Master, and to have each group coordinated and supervised by one Master. Shipyards were given broad discretion as to which shops to group together to achieve the desired result, but were given objectives to be attained, among which were reasonably balanced workload and responsibility for each Master heading a group, consolidation of administrative and support services then maintained in each shop, under the grouphead, improved job coordination by concentration of more work under the coordination and supervision of one master.

Among the areas of Mr. Dugan's work affected by the reorganization and establishment of the Group Master position as indicated by the documentary evidence submitted by Mr. Dugan were his participation and authority in selection, assignment and management of subordinate

personnel, housekeeping and safety practices, production, participation in top management meetings and conferences, and other phases of administrative management.

The Boston Naval Shipyard's position was stated in its letter of reply to our inquiry in which the Shipyard Commander advised that the functional responsibility and authority of Mr. Dugan are identical as before the reorganization and that the additional functional responsibilities and authority of the Group Master or Head are extracted directly from those of the Production Officer, that he serves as an alter ego to the Production Officer relieving that officer of duties depicted in the organizational chart furnished us. He added that Mr. Simon bears the primary responsibility for administration and functioning of the Sheet Metal Shop, plus the additional functions assigned to him by delegation of responsibility previously vested in the Production Officer.

PART V. FINDINGS AND RECOMMENDATION

The sole question before us is whether there has been a "reduction in rank" of Mr. Dugan within the provisions of Section 14 of the Veterans' Preference Act of 1944. If there was, then of course the "action" must fail for want of procedural compliance with that section of the Law.

Section 19 of the Veterans Preference Act of 1944 vests authority and responsibility in the Civil Service Commission for giving full effect to the provisions of that Law. Thus, the Commission rather than the Navy Department is empowered to determine what constitutes a reduction in rank, and provisions of the Naval Civilian Personnel Instructions need not necessarily bind us. The Commission has not defined "reduction in rank." It has from time to time, as have we, issued decisions that particular position changes constituted reductions in rank where there was no loss of grade or salary involved. In such cases we found that there was a functional and substantial lessening of the "rank" of the position to which changed with relation to other positions in the immediate area in the supervisory relationship.

Conceding all that Mr. Dugan claimed has happened to

his Master Shipfitter responsibilities by the reorganization and grouping of the Shops 11 and 26, with the Sheet Metal Shop under a Group Master, as indicated by the documentary material submitted, and that he has as he claims, "lost prestige," does this establish an adverse action in the nature of reduction in rank within the statute? We have held that a reorganization per se or a redistribution of responsibilities and functions is not a personnel action, but may give rise to the occasion to effect a personnel action. The personnel action to which it may give rise is a position change, that is to change the employee by promotion, reassignment or change to lower grade from one position to another position. Under certain circumstances this is in the nature of a reduction in force and is governed by the Retention Preference Regulations of the Civil Service Commission. Under other circumstances the action i.e., position change, is in the nature of a classification downgrading. Under still others, it is for personal cause, stemming from an employee's job or other deficiencies. But in every case there has to be a resulting personnel action or position change of the employee effected before we can exercise jurisdiction to determine whether he has been reduced in rank. We are not aware of any case in which the Commission has held that a reduction in rank occurred where a position became subordinate to a newly established supervisory position and where no personnel action was taken with respect to the employee in the position alleged to have been reduced.

It may be that the duties and responsibilities which Mr. Dugan is now charged with carrying out do not, from a job classification point of view, warrant the designation of Master as defined by the Navy Department guide line definitions. But since this kind of position is not subject to the Classification Act of 1949 as amended, that classification question is not one in which we have primary or original jurisdiction, but only appellate jurisdiction under Section 14 of the Veterans Preference Act after a preference eligible employee has been reduced in grade by a position change or personnel action. Unless and until a personnel action is taken by the Shipyard, we cannot conclude

that there has been an adverse action effected giving rise to the right of appeal to this office under Section 14 of the Veterans' Preference Act of 1944.

It is accordingly our decision that Mr. Dugan's appeal is not within the purview of Section 14 of the Veterans' Preference Act of 1944 because no adverse personnel action has been effected by the Shipyard.

**PART VII. NOTIFICATION OF FURTHER APPEAL RIGHT TO
THE COMMISSION**

No further consideration can be given your case by this office. If you have new and material information, or if you believe that the decision of this office is not proper on the basis of the facts presented, you may appeal to the Board of Appeals and Review, U.S. Civil Service Commission, Washington 25, D.C. Any such further appeal must be submitted through this office within seven (7) days from the receipt of this notice. The file will be forwarded promptly by this office to the Board of Appeals and Review, U.S. Civil Service Commission, Washington 25, D.C., for final decision. Any subsequent correspondence should be with that office.

RICHARD J. HEALEY,
Regional Director.

HARRY GROSSMAN,
Appeals Examiner.

May 10, 1961

MEMORANDUM

From: F. J. Dugan, Master Shipfitter, Boston Naval Shipyard
To: Director, Civil Service Commission
First U.S. Civil Service Office
Post Office and Courthouse Building
Boston, Massachusetts
Subj: Appeal from Regional Office "Decision", dated 3 May 1961, File HG:emb

1. This letter is my formal appeal to the Board of Appeal and Review, Civil Service Commission, Washington 25, D.C. I am appealing "the decision" of the First U.S. Civil Service Regional Office, dated 3 May 1961, File HG:emb, that was received by me on 4 May 1961. My conviction is that "the decision" of the Regional Office is not proper or rational on the basis of the facts presented.

2. Since the effect and nature of this adverse action is continuing, and additional action will result that may evolve to my further disadvantage, I request that I be informed as to where and to whom I am to submit additional evidence and documents of a pertinent nature as the investigation proceeds.

3. In regard to this appeal, I wish to appear personally before the Board of Appeal and Review representatives, accompanied by the allowable number of representatives of my choice, in order to elaborate and clarify to the Board of Appeal and Review proof of my allegations.

4. I am submitting the following comments as information to the Board of Appeal and Review relative to the Regional Office "decision":

Part I—Introduction

No comment

Part II—Basis for Acceptance of Appeal

No comment

Part III—Examination of Procedures

No comment

Part IV—The Issues and Analysis of Evidence

1. Refer to Paragraph 1, lines 1, 2 and 3

1a. Since 1 February 1961, I have retained the title of Master Shipfitter for pay purposes only. The authority, responsibility, etc. that I exercised as the Master Shipfitter, and former ranking civilian official in Shops 11 and 26, are now vested in the Group Master position.

2. Refer to Paragraph 2, lines 1 thru 6 of Commander's letter, 30 Nov '60

Refer to Paragraph 3, lines 6 thru 10 of Commander's letter, 1 Feb '61

2a. These statements clearly establish that the Group Master position is now the ranking civilian official in all shops within the Structural Group, consisting of Shops 11-17 and 26.

3. Refer to Paragraph 2, lines 5 thru 9 of Commander's letter, 3 Nov '60

Refer to Paragraph 3, lines 1 thru 10 of Commander's letter, 1 Feb '61

3a. These statements clearly establish that, prior to 1 February 1961, I would continue to perform the duties of Master Shipfitter, as ranking civilian official of Shops 11-26, as it states, "You will continue to direct the affairs of your shop as heretofore." These statements also clearly establish that, concurrent with my designation as "Head of Shops 11-26", on 1 February 1961, I would no longer continue to direct the affairs of my shop as heretofore in my former capacity as Master Shipfitter, the ranking civilian official in Shops 11-26, with the full authority, etc. vested in the Master Shipfitter position.

Effective as of 1 February 1961, for all purposes

other than pay, I would exercise the limited authority, etc. that has been left to the position of "Head of Shops 11-26", and that the position of "Head of Shops 11-26" would report to the position of Group Master, as the ranking civilian official of Shops 11-17 and 26.

Paragraph 5 established that, when my position as "Head of Shop" or Master Shipfitter becomes vacant, I will be succeeded by a Foreman, which is admittedly a lower Navy Department, Group IVa rating than Master. It must, therefore, be axiomatic that the duties, etc. that I am now performing are considered by the Navy Department to be equivalent to Foreman level. Since it is evident that I am now performing duties equivalent to a Foreman, it must also be clearly evident that I have suffered a substantial lessening of rank in relation to other formerly equivalent positions in the immediate area in the supervisory relationship.

As Master Shipfitter, exercising all the responsibilities, etc. that was vested in the Master Shipfitter position, prior to 1 February 1961, I was, *at least*, organizationally equal in every respect to the individuals now holding the position of Group Master, or Super-Master, and in scope of responsibility, my position exercised more authority and responsibility in all areas, due to my controlling the largest and most diversified shop in the activity. In fact, *as Master Shipfitter in full charge of two large naval shipyard shops, I was performing all of the duties now performed by a Group Master.*

A cursory investigation by the Board of all lines of authority, communication and functions performed in the practical everyday relationship of rights, status, prestige, etc. that was in the Master Shipfitter position prior to 1 February 1961, as compared to the same items in the position of "Head of Shop" subsequent to 1 February 1961, will clearly establish and substantiate the fact that I have suffered a loss of responsibility, functions, status, prestige, etc. and that a definite functional and substantial lessening of rank, in relation to formerly equivalent positions in the

immediate area of supervisory relationship has occurred.

4. Refer to Paragraph 8 in entirety.

4a. I have submitted documents establishing that, except for the statement that Mr. Simon, as Group Master, still bears the primary responsibility for Shop 17, the Shipyard position is incorrect and untenable. The Regional Office has not indicated in any way that they have evidence supporting the Shipyard's position. The Regional Office has stated, in Paragraph 5 and 8, that I have submitted documents that establish and substantiate my contention that the functions transferred to the Group Master position came from the former Master position within the shops to be grouped.

Part V—Findings and Recommendations

1. Refer to Paragraph 2 in entirety

1a. The Regional Office states that "Section 19 of the Veterans' Preference Act of 1944 vests authority and responsibility in the Civil Service Commission for giving full effect to the provisions of that law." The Board will note the actual wording is, in part, "Carry into full effect the *provisions, intent and purpose* of this Act."

The Regional Office has seen fit to conveniently provide their interpretation of the provisions of the Act but, intentionally or otherwise, have overlooked their duty to enforce the *intent and purpose* of the Act. "This decision" is, in my opinion, one of the finest, classical examples of evasion of responsibility for making a sound decision and "passing the buck" to higher authority that has ever been brought to my attention.

Possibly the wording of the Regional Office "decision" is suggesting that the triggering off of some kind of personnel form be initiated. Actually, this aspect of the case was appreciated by the appellant and his representatives; however, it was decided that we did not desire to process action of this type, at this

time. *It is the PRIMARY responsibility and duty of the Civil Service Commission to apply the criteria to determine whether or not an action (formal or informal) constitutes a reduction-in-rank within the purview of the PROVISIONS, INTENT and PURPOSE of the statute.* This decision may admittedly prove difficult for, in the words of "the decision" brief, "The Commission has not defined reduction-in-rank." Even this admission was not enough to forestall action by the Hearing Officer however, for he elected in favor of the Boston Naval Shipyard; i.e., *he decided in favor of a non-veteran over a veteran, and based his action on the Veterans' Preference Act.* "The decision", as pointed out above, stated that, subsequent to some "personnel paper" being implemented, it would have jurisdiction, but, note well, this jurisdiction is appellate, *the present proposition is primary. We elect to present the case to the Commission on a primary basis.*

2. Refer to Paragraph 3 and 4 in entirety

2a. The Regional Office in these statements has held in effect that the activity may, as part of the reorganizing and redistribution of duties, assign me, as one of my duties, to sweeping the floors of the buildings I was formerly in full charge of, providing only that, (1) the activity states to the Regional Office that I am to retain the title of Master Shipfitter while sweeping such floors, (2) that the activity states to the Regional Office that I am to retain the pay and compensation of Master Shipfitter while sweeping such floors and, (3) that the activity insures to the Regional Office that the activity will not issue to me a personnel action as a result of the redistribution of duties.

The Regional Office has held in effect since they have not defined any limitations, that regardless of the extent of the reorganization or redistribution of duties and functions involved, unless and until the activity issues a personnel action, the activity may evade the *provisions and intent and purpose* of the Veterans' Preference Act with the tacit approval of the Regional

Office, as it will not be necessary for the Regional Office to take any official notice or action of such a situation until a personnel action is taken by the activity, and the Regional Office has so informed the activity by this "decision".

3. Refer to Paragraph 3, lines 18 thru 22

3a. The Regional Office refers to a newly established supervisory position, but the Regional Office fails to state that I have, in my opinion, indicated to the Regional Office many areas in which the newly established supervisory position has been established in possible violation of law, Civil Service Regulations, and NCPI's. The Regional Office does not indicate in "this decision" that they have made any attempt to establish the legality of this position, or indicate that they have attempted to resolve or correct this situation in any way.

5. The basis of my original appeal to the Regional Office was to establish that I have been the victim of an adverse action by the activity without the benefit of proper personnel action and administrative procedures being carried out by the activity. The Regional Office has established that I have been adversely affected in that I have lost grade-controlling functions, my reporting level has been lowered, my organizational level has been lowered, and, in my opinion, I have established that my status and prestige has been lowered and my reputation has been irreparably damaged.

6. The Regional Office "decision" then states in effect that this is immaterial and irrelevant to the Regional Office until the activity issues a personnel action. The Regional Office is fully aware that the activity will not issue such a personnel action under these conditions and is using this, in my opinion, as an excuse for its reluctance to initiate remedial action to carry out its designated authority and duty to enforce the *provisions, intent and purpose* of the Veterans' Preference Act of 1944.

7. The Regional Office in "this decision" has so distorted the *provisions, intent and purpose* of the Veterans' Prefer-

ence Act that in "this decision" the Veterans' Preference Act is used to provide an advantage to a non-veteran over a Veteran Preference Eligible; thus, providing a clear-cut illustration of the methods the Regional Office is willing, and possibly eager, to use in its attempt to evade exercising the *primary authority* and *duty* invested in the Civil Service Commission by Congress to *enforce* the *provisions, intent* and *purpose* of the Veterans' Preference Act.

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Mass.

BAR:JWL:mfk

May 22, 1961.

Mr. Francis J. Dugan,
347 Dutton Road,
Sudbury, Massachusetts.

Dear Mr. Dugan:

This will acknowledge your appeal from the decision dated May 3, 1961, of the First U. S. Civil Service Region declining to accept an appeal from you, under Section 14 of the Veterans' Preference Act, in regard to your employment with the Boston Naval Shipyard.

In reply to your request for a hearing, we must advise that there is no right to a hearing under Section 14 of the Veterans' Preference Act or the Commission's regulations pursuant thereto until it has been established that an adverse action within the purview of the law and regulations has been taken against the preference eligible. Accordingly, no hearing has been scheduled in your case.

You are hereby granted an extension of time of ten (10) days from the date of your receipt of this letter in which to submit any further written representations, in duplicate, in support of your contention that you were reduced in rank within the meaning of Section 14 of the Veterans' Preference Act.

Sincerely yours,

JOHN E. BLANN,
Chairman Board of Appeals and Review.

cc: Commanding Officer, Boston Naval Shipyard, Boston, Massachusetts.

cc: Legal Counsel, Office of Industrial Relations, Department of the Navy, Washington 25, D. C.

FILE RETAINED IN BAR.

29 May 1961.

To: Board of Appeals & Review
U.S. Civil Service Commission
Washington, D.C.

FROM: Francis J. Dugan, Master Shipfitter
Bldg. 104, Structural Shops 11/26
Boston Naval Shipyard
Boston, Massachusetts

SUBJ: Appeal of Regional Office Decision, dated 3 May 1961,
File HG:emb

1. In accordance with your letter to me, dated 22 May 1961, and received by me on 23 May 1961, File #BAR:JWL:mfk, I am submitting the following additional comments for your consideration.

2. Since the effect and nature of this adverse action is continuing, and additional action will result that may evolve to my further disadvantage, I request the right to submit additional pertinent information and evidence to the Board, as these developments occur, during the process of the Board's investigation. I make this request so that I may have the opportunity to fully protect my rights and interests as a citizen of these United States of America, and as assistance to the Board in completing their findings based upon the fully developed available facts.

3. My letter of appeal to the Board of Appeals and Review, dated 10 May 1961, File HG:emb or File HG:fr, should be corrected as follows:

Page 3, Line 2, the wording, "The Regional Office has stated in Paragraph 5 and 8" should be corrected to read, "The Regional Office has stated in Paragraphs 5 and 7"

4. The Board will note that, concurrent with the issuance of Exhibit "yyy", I now have three titles for one and the same position. I have one position title for what the Boston Naval Shipyard *claims* I am doing, one different position title for what I am *actually* doing, and I now have a still different position title to better enable the Boston Naval Shipyard to *hide the difference* between the first two. These

three position titles for one and the same position are, in the chronological order in which I received them, as follows:

- a. I am permitted to retain, at the convenience of the activity, the title of the *former* ranking civilian official of Shops 11/26 as Master Shipfitter for the purpose of pay and compensation, and for the purpose of enabling the Navy Department and the Boston Naval Shipyard to patently ignore the fact that the authority, responsibility, grade determinant functions, etc., have been transferred to the Group Master position, as has been established in the Regional Office decision. This second purpose then creates circumstances that allow the Navy Department and the Boston Naval Shipyard to advance the untenable pseudo-assertion that my position has not changed, and that they are not deliberately attempting to evade the *provisions, intent, and purpose* of the Veterans' Preference Act of 1944. This, in spite of the fact that the Navy Department and the Boston Naval Shipyard have full knowledge that, as Master Shipfitter, prior to 1 February 1961, in full charge of two large, highly diversified, complex, major naval shipyard shops, *I was performing all of the duties now performed by a Group or Super Master*. This is further established by the fact that in some naval shipyards the Master Shipfitter was reassigned as Group Master, Shops 11/26. *This was a change in title only*, as no other shops were added or deleted to make up the shop grouping, and no transfer of functions was involved.
- b. Since 1 February 1961, I have had the title and exercised the limited authority, responsibility, functions, etc. that have been left in the position of "Head of Shops 11/26", the now second ranking civilian position in Shops 11/26, and answerable to the now first ranking civilian position of Shops 11-17-26, the Group Master, Structural Group, Shops 11-17-26.
- c. Since 15 May 1961, in accordance with Exhibit "yyy", for the purpose of the "Ungraded Maintenance Review", I will be titled "Master Mechanic". The

Board will note that this is an extension of the efforts of the Navy Department and the Boston Naval Shipyard to further ignore the documented and established facts that the position of Master Shipfitter, effective 1 February 1961, was changed and down-graded by the transfer of authority, responsibility, and grade determinant functions to the Group Master position, and that *the position of Master Shipfitter, prior to 1 February 1961, was performing all of the duties now performed by a Group Master.* The Board will note that this is, in my opinion, a transparent attempt to impart a minuscule vestige of proper and legal appearance to the shipyard's actions, to evade the activities administrative responsibilities in properly fulfilling the requirements of the Ungraded Maintenance Review.

The Boston Naval Shipyard, in accordance with Exhibit "yyy", apparently intends to certify that *all* of the Masters and *all* of the Foreman positions within the activity are performing duties covered by the enclosures listed in Exhibit "yyy". The application of this extremely broad definition of Master Mechanic and Foreman Mechanic titles to all positions within the activity by the Boston Naval Shipyard is, in my opinion, a deliberate, brazen and immoral administrative procedure avidly adopted by the activity as a means to avoid exercising the activities responsibility to notify the proper authorities as to the extent of the changes in the positions effected by Shop Grouping, and so evade, in turn, the activities responsibility to put into effect the necessary personnel actions to downgrade or upgrade, as appropriate, the effected positions, thus evading the activities responsibility to insure that the individuals in the effected positions will receive pay and compensation commensurate with the ACTUAL duties, etc., of the changed positions. The extent of the change, in some of the Master Mechanic and Foreman positions in the Boston Naval Shipyard, is exceedingly drastic. Some of these positions have lost functions, duties, etc., closely similar to my case, and, in addition, have lost by organizational

relocation, the complete responsibility for *all* of the employess, performing *all* of the operations connected with performing *all* of the Ordnance work performed on *all* ships and in *all* shops at the Boston Naval Shipyard. (See Exhibit "nnn" and Encl. 2). This is the type of position change the Boston Naval Shipyard apparently is attempting to prevent the proper authorities from becoming aware of, so that the activity may continue to evade its administrative responsibilities, and is using the broad coverage of Master Mechanic and Foreman Mechanic as a means to this end.

5. Exhibit "zzz" will illustrate to the Board that in other naval shipyards the position of Foreman Welder, concurrent with the implementation of Shop Grouping, *does not* report to the position of Master Shipfitter; instead, the entire welding operation has been removed from the Master Shipfitter's area of responsibility and transferred to the Structural Group Master position. Exhibit "zzz" will also illustrate that, in other naval shipyards, the Groupmaster *does not* retain primary responsibility for his parent shop, as was done by the Boston Naval Shipyard. The Boston Naval Shipyard's non-conformance, in these two areas, with the practice followed in other naval shipyards, was possibly prompted by the fact that it was widely known throughout the activity that I was seriously considering filing an appeal action when Shop Grouping was implemented, and is an attempt by the activity to minimize, to some small degree, the effectiveness of my appeal action. It is my contention that either I, or the present Foreman Shipfitter, are super-numerary to the present organization outlined for Shops 11/26. The Board will note that the organizational charts submitted by the activity *do not* show the *position* or *duties* of *Foreman Shipfitter* or *Foreman Welder*, in their position of reporting to me as "Head of Shops 11/26". If these positions were properly shown, with the duties indicated, the ridiculousness of this organizational set-up would be apparent at a glance. It is my opinion that, if the "Head of Shops 11/26" position was to be vacated, the Boston

Naval Shipyard would, with commendable, outstanding alacrity and dispatch, immediately decide that this position would be declared surplus, and the present organizational charts would be concurrently revised to indicate that the positions of Foreman Shipfitter and Foreman Welder would assume the duties of Head of Shop 11 and Head of Shop 26, respectively, and that each position would report direct to the position of Group Master, Structural Group, thus enabling the Boston Naval Shipyard to conform with the actions of other naval shipyards in meeting the original and basic objectives of the Shop Grouping Program in the Structural Group. The Group Master would also probably be relieved of the primary responsibility for his parent shop, as of the same date.

6. The following incident will perhaps serve to define what may be the official attitude in the shipyard, relative to this appeal action:

One of my fellow Master Mechanics, attending an activity sponsored social function in the shipyard, heard a very high ranking shipyard military officer Department Head refer to, "an individual having the temerity to question the designation by the Shipyard Commander of who would be assigned the position of Group Master."

The Board will note that this very high ranking officer was apparently not concerned with the possible violation of law, regulation or Naval Civilian Personnel Instructions, in depriving a Veteran Preference Eligible of the rights and benefits provided under the *provisions, intent and purpose* of the Veterans' Preference Act.

7. I am submitting the following additional comments as information to the Board, relative to the Regional Office Decision:

Part IV—The Issues and Analysis of Evidence

1. Refer to Paragraph 4.

1a. The Board will note that I referred to Naval Civilian Personnel Instruction 352.4-4(b)(b1)(b2) to

substantiate that, in accordance with the criteria defined in this section of the Naval Civilian Personnel Instruction, I have been reduced in rank.

The Regional Office Decision in Part V, Findings and Recommendations, Paragraph 2, Lines 4 and 5, states, "and provisions of the Naval Civilian Personnel Instructions need not necessarily bind us." Naval Civilian Personnel Instruction 352.4-4b actually reads, in part, "Commission decisions, however, indicate that the following comparisons, between these positions from and to which reassignment is proposed, are necessary." Since this section of the Naval Civilian Personnel Instructions is primarily based on previous Commission decisions, it appears to be logical to me that the Commission would apply the same principles and reasoning in this appeal, and that the provisions would be binding in this action as they were in the previous actions.

The Board will note that the policy of the Navy Department, and hence its various activities, in relation to personnel actions (formal or informal) affecting civilian employees is expressed in the volume NAVEXOS P-122, entitled, Navy Civilian Personnel Instructions.

The Board will also note that the United States Supreme Court, in the case of, "Service versus Dulles," and the United States Court of Claims, in the case of, "Watson versus U.S.," have ruled that: The policy in effect in a government agency, department, etc., at the time that an action is initiated is binding on subject agency, department, etc., and that any action initiated by said agency, etc., must be placed in effect within the criteria of the policy existing as of the effective date of the action.

The foregoing rulings are presented as substantiation to the Board that the provisions of the Naval Civilian Personnel Instructions should be equally as binding in this appeal action.

Part V—Findings and Recommendations

1. Refer to Paragraph 3, Lines 6 thru 10.

1a. The Board will note that the Regional Office should have been cognizant of the fact that it is not necessary to change the title and/or pay of a position, or to issue a formal personnel action to effectively implement an *actual position* change.

The Board will note the existing Navy Department policy expressed in Naval Civilian Personnel Instruction 352.4-2 which reads, in part, "As used in (3) above, "reorganization," means the planned elimination, addition, or *redistribution of functions and duties within an organization*. Thus, the reduction-in-force system will govern any adverse action brought about by *deliberate management action to change official duties previously assigned*, where the reasons are impersonal to the affected employee. *This applies to unpublicized changes made by a supervisor affecting one or more positions under his control*, as well as to changes resulting from formal reorganization orders affecting complete organizations."

The rulings of the courts, relative to existing agency policy, as brought to the Board's attention in a previous section of this letter, must be equally as binding for the existing policy defined in Naval Civilian Personnel Instruction 352.4-2 as quoted, in part, above.

The unpublicized changes that are placed in effect by higher authority, by informal administrative procedures, are fully as effective in implementing deliberate management action to change official duties previously assigned, and thus change the content of the position to the extent that a change in pay level should be initiated, even though the previous title and pay are deliberately kept in the position by premeditated management action, to better enable management to evade both its administrative responsibilities and the provisions, intent and purpose of the Veterans' Preference Act.

The Board is, I am sure, fully aware that despite

the fact that a position of an employee consists OFFICIALLY of what higher authority *claims* is assigned to it, it ACTUALLY consists of the duties and responsibilities discharged by the employee. Should the ACTUAL duties and responsibilities differ from those OFFICIALLY prescribed for the position, higher authority should initiate appropriate action to eliminate the difference. *Failure to do so constitutes a misassignment and misassignments are contrary to law and Civil Service Commission Regulations.*

The Board will note that the Master Sheet Metal Worker, in his capacity of Group Master, and I, as Master Shipfitter, in my capacity as Head of Shops 11/26, in accordance with the foregoing criteria *are currently misassigned, misassigned by the Boston Naval Shipyard in possible violation of law and Commission Regulations.* The Board will further note that neither the activity nor the Regional Office have indicated that they intend to initiate any administrative action to correct these *misassignments.*

2. Refer to Paragraph 3, Lines 8 thru 22.

2a. We were not aware that it was necessary for the Regional Office to have knowledge of an exactly similar precedent case before they could apply the criteria expressed in the Veterans' Preference Act. We assumed that the Regional Office would exercise the primary responsibility vested in them by Congress to apply the criteria expressed in subject Act and enforce the *provisions, intent and purpose* of the Act. We felt that the Regional Office was fully capable of exercising its independent judgment and responsibility, regardless of the circumstances involved, and that the Regional Office would be fully aware of the fact that informal personnel action to change the content of a position, and so downgrade the position, is fully as effective in implementation of the desired change as any formal personnel action would be. We felt that the Regional Office would be cognizant of the fact that when an employee has himself allowed his position to

deteriorate to a point where downgrading becomes necessary, the cause of such downgrading (formal or informal personnel action) can hardly be considered "impersonal to the employee," and the retention preference regulations would not be for application—rather, any subsequent demotion would be processed as a deficiency in performance and *the employee would then be without the protection of the rights and benefits accorded a Veteran Preference Eligible under the provisions, intent and purpose of the Veterans' Preference Act of 1944.*

Naval Civilian Personnel Instruction 351.9-4 b, Policy, states: "The policy outlined in (1) through (4) below was established by the Department of Defense for the purpose of assuring equitable and uniform treatment of employees when functions to which they were assigned are transferred from one service of the Department of Defense to another, or from one naval activity to another. *The same criteria shall apply when functions are transferred to a different location within the same activity.* They will apply also to similar actions involving transfer from or to another Government agency when not inconsistent with any provisions of law or agreement relating to a particular transfer or consolidation."

Naval Civilian Personnel Instruction 351.9-4 c(1), Identifying positions with transfer of functions, states: "Certain duties of one or more positions are to be transferred while the unit performing the functions to be transferred will remain intact to perform remaining functions. If the majority of the duties of a position are to be transferred to another service or naval activity, the incumbent will be identified with the transfer of functions. *However, if grade-controlling duties are involved the employee's rights will be based on the location of the higher grade duties rather than the majority of duties.*"

Naval Civilian Personnel Instruction 351.9-4 d(1), Effecting actions, states: "Offer to follow the functions must be extended to all Retention Group I, II

and III employees in positions identified with transferred functions."

The rulings of the courts, relative to existing agency policy, as brought to the Board's attention in a previous section of this letter, must be equally as binding for the existing policy defined in Naval Civilian Personnel Instruction 351.9-4 as quoted, in part, above.

The Veterans' Preference Act has vested in the Civil Service Commission the authority and responsibility to enforce the *provisions, intent and purpose* of this Act. The Commission has the primary duty to apply the criteria defined in the Act in reaching a decision. The Act specifies that a reduction-in-rank is a definite item independent of pay, compensation, etc. The Act *does not* state that the loss of pay, compensation, grade or title must be a prerequisite to reduction-in-rank. The Act *does not* state that a formal personnel action must be a prerequisite to a reduction-in-rank. The Commission must surely be aware that Federal agencies have previously attempted to evade the *provisions, intent and purpose* of this Act by questionable administrative management interpretations of the Act and resultant actions of commission or omission that necessitated court action to remedy. The Commission must realize that a reduction-in-rank can be just as conclusive when placed in effect by informal means, such as, a possibly deliberate management action of omission (failure to issue a proper mandatory personnel action) to attempt to evade the administrative responsibility of management and the *intent and purpose* of the Veterans' Preference Act. It has been my understanding that the function of the Civil Service Commission is to safeguard and protect the rights and benefits of Federal Civilian Employees from the harmful effects of arbitrary management actions, and to initiate action to enforce management to correct such actions when they are brought to the Commission's attention and, more specifically, their function to protect the rights and benefits of Veteran Preference Eligibles whenever the rights granted under the Act are violated, regardless

of the methods employed or circumstances involved in the violation.

8. The Board will note that I have submitted documentary evidence to establish, and the wording of the Regional Office Decision further establishes, that I have had my position ACTUALLY changed in the following areas:

1. My grade determinant functions have been transferred to the Group Master position.
2. My position is now one level lower in the organizational chart of supervision in the immediate area.
3. My position now reports to a lower level of supervision in the immediate area and the occupant of the position my current position reports to was my organizational equal prior to his assuming my grade determinant functions.
4. Many of my functions, other than grade determinant, have been transferred to the Group Master position.
5. I have lost status, prestige, and suffered irreparable damage to my reputation, due to this position downgrading.
6. My current position is now organizationally equal to other individuals in the rating of Foreman, Chief Quartermaster and Quartermaster, and all of these were clearly subordinate to my previous position.
7. The duties of my current position are equivalent to Foreman level, which was subordinate to my previous position.
8. The subordinate status of my current position is clearly recognized by all levels of shipyard management and employees, as is evidenced by the change in usage of the lines of communication, authority, etc., to suit and reflect the change in status of the positions.
9. The recognition of the new subordinate state of non-Group Masters has so thoroughly permeated all levels of the Boston Naval Shipyard, military and civilian, that it is even demonstrated outside and after regular working hours. The seating arrange-

ments at the social functions, sponsored by activity groups, have been drastically altered to recognize the now superior rank and status of Group Masters, and non-Group Masters have, in effect, been relegated to positions, "below the salt" as a reflection of their fully recognized now subordinate duties.

10. Prior to this position change, I was performing all of the duties now performed by a Group Master.

The foregoing items should be conclusive to the Board that, regardless of how I lost in all these areas, such extensive losses in these areas must establish that I have been effectively reduced-in-rank. If the loss of the above areas of responsibility, etc., is not sufficient for the Board to determine that I have been reduced-in-rank, in violation of the *intent* and *purpose* of the Veterans' Preference Act, I request that the Board inform me of the reasons why the Board considers I have not been reduced-in-rank and what else I could possibly lose in order for the Board to consider that I have been reduced-in-rank. I have appealed to the Commission for the sole purpose of asking the Commission for the sole purpose of asking the Commission to decide if I have been reduced-in-rank, regardless of how this reduction-in-rank was effected. The primary purpose of this appeal is *not* to ask the Commission to determine how this reduction-in-rank was accomplished, *not* to determine how it should have been accomplished (personnel action or otherwise). This appeal is asking the Commission to determine, (1) Have I or have I not been reduced-in-rank?, (2) Is this reduction-in-rank within the purview of Section 14 of the Veterans' Preference Act? and (3) How can the Regional Office logically justify their position that a deliberate, premeditated management personnel action (formal or informal) that results in the reduction-in-rank of a Veteran Preference Eligible and to the personal advantage of a non-veteran, and to the personal disadvantage of a Veteran Preference Eligible, is not within the purview of Section 14 of the Act and, at the same time, logically claim that they are carrying out the *trust* vested in them by Congress to: CARRY INTO FULL EFFECT THE PROVISIONS, IN-

TENT AND PURPOSE OF THIS ACT, as stated in Section 19 of the Act, or logically claim that they are making any effort to enforce the provisions, intent and purpose of Sections 12 and 14 of the Veterans' Preference Act? The Board will note that subject Act is entitled, "Veterans' Preference Act of 1944", not "Non-Veterans' Preference Act of 1944".

9. The Regional Office Decision, if sustained, has created conditions that will allow my reduction-in-rank to be corrected only by recourse to action in the United States Courts. The Regional Office has, in effect, notified the Navy Department that the Commission will not, or cannot, take any action to sustain my appeal action unless the Navy Department will first issue a formal personnel action paper of some sort to me. The Regional Office must fully realize that the Navy Department will not issue any personnel action to me under these circumstances, as the current interests of the Navy Department are to prevent the improper administrative conditions, created by the implementation of the BuShips Shop Grouping Program, being brought to the attention of the authorities responsible to correct such conditions. The situation then resolves itself to a completely effective impasse, in which the Commission policy will be that the Commission refuses to act unless the Navy Department issues a personnel form. The Navy Department policy will be, we will not issue such a form and we are not required to unless the Commission so orders us. If this situation had been deliberately prearranged between the Commission and the Navy Department, it could not have been more effective in delaying and preventing the final resolution by administrative remedies of my appeal action. In ruling as the First Civil Service Region has in this matter, such action is tantamount to the Civil Service Commission refusing to accept the responsibility outlined in the Veterans' Preference Act of 1944 as amended, particularly Section 19. In short, such action condones the illegal or ill advised action of an agency, and forces the appellant to go to the Federal Court for relief. The agency and the Civil Service Commission fully recognizes that such Federal Court action is, in a majority of instances, completely beyond the fiscal capabilities of the wronged individual and

the sum and substance of the matter is that the appellant is denied redress. This impels the inquiry, "Is justice to be extended only to the person or persons who have the financial means and the readiness to expend the necessary funds to foster Federal Court action?" The spirit and intent of the law is not being properly construed in this instance and the First Civil Service District is not fulfilling the obligation imposed upon it by Section 19 of the Veterans' Preference Act of 1944.

10. I am submitting the below listed documents as enclosures to this letter to substantiate my previous contentions, and as possible assistance to the Board in their consideration of my appeal action:

1. First Regional Office Decision, dated October 7, 1959, John M. Horan, File #HG:emb, Exhibit "oo".
2. Board of Appeals and Review Decision, dated January 29, 1960, John M. Horan, File BAR:JOC:mod, Exhibit "qq".
3. Bos.NavShpyd Notice 12000—15 May 1961—Ungraded Maintenance Review—Exhibit "yyy".
4. Portsmouth NavShpyd Notice 5450—15 May 1961—Structural and Functional Charts—Exhibit "zzz".
5. Production Officer Memo—undated—Shop Grouping (Electrical)—Portsmouth NavShpyd—Exhibit "aaaa".
6. Attorney General Decision—Exhibit "bbbb".
7. First Regional Office Decision—4 November 1958—File HG:fr—Appeal of H. L. Finn—Exhibit "cccc".
8. Article "Policy Violations Ignored," published in May 12 issue of, "The Government Standard"—Exhibit "dddd".

11. The following is submitted to the Board as additional comment, relative to the Regional Office Decision:

Part V—Findings and Recommendations

1. Refer to Paragraph 4, lines 4 thru 9.

1a. Mr. H. Grossman, First Regional Office Appeals Examiner, on 5 April 1961, in his office with witnesses present, stated, "If this was a classified position and subject to the Classification Act, the principles in the "Horan Case" (Exhibits "oo" and "qq") would apply in this action."

The Board will note that the District Court of the United States, in Civil Action 7076, "Wettre versus Hague" Opinion, dated 14 October 1947, has held that, "That legislation gives specified preference in both the classified and unclassified civil service (as well as elsewhere) to various classes including honorably discharged ex-servicemen who have served on active duty in any branch of the armed forces of the United States during any war, campaign or expedition (5 U.S.C. S851 (a) (b) and (4))." At least some, and perhaps all, of the plaintiffs fall within this description of the persons entitled to preference. Moreover, the type of preference which plaintiffs have been accorded by —gres— includes the privilege not to be "reduced-in-rank" or compensation, except for such cause as will promote the efficiency of the service and for reasons given in writing. (5 U.S.C. S863). Subject opinion further states, "Before concluding this opinion, I ought to add that I have not overlooked three subsidiary allegations of the compliant: that defendants have *conspired* to nullify the Act; that they have not kept proper records of the hearings before them; and that plaintiffs will be demoted regardless of any appeal to an administrative body."

The Board will note that I have substantiated, and the wording of the Regional Decision affirms, that *I have*, without loss of pay or title (but with addition of two additional titles) or transfer of location, or benefit-of personnel action, been subjected to an ACTUAL position change, due to the drastic lessening of re-

sponsibilities and duties resultant from deliberate management action.

The Board will note that in the opinion of a United States Court I am entitled to the same protection under the Veterans' Preference Act that veterans' covered by the Classification Act are entitled to.

12. When I receive your decision, will I then have exhausted my administrative remedies? If not, will you inform me as to what administrative area I next appeal to, if required? I also request that I be provided the minutes of the proceedings in arriving at your decision.

13. In view of the relatively lengthy amount of time required by the Regional Office to issue their decision of 3 May 1961, I would sincerely appreciate any effort made by the Board to expedite the processing of this appeal action. The passage of time is continually resulting to my further disadvantage, and I would like to insure that any further action required to bring this appeal action to a final decision are initiated by me, or the activity, as soon as is reasonably possible.

Sincerely Yours,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Mass.

BOSTON NAVAL SHIPYARD
Boston 29, Mass.

(160-170)
LL/Dugan, F. J.

June 14, 1961.

Chairman, Board of Appeals and Review,
U. S. Civil Service Commission,
Washington 25, D.C.

Dear Sir:

Comment on the appeal of Mr. Francis J. Dugan, enclosed in your letter BAR:MFK of 5 June 1961, is submitted below.

We repeat our position set down by letter of 23 February 1961 to the Director of the First U. S. Civil Service Region, and we agree with the Regional Director that the action affecting Mr. Dugan does not constitute a reduction in rank within the provisions of Section 14 of the Veterans Preference Act of 1944. In addition, it is certified that Mr. Dugan is performing the duties of Master Mechanic described in the "Definitions of Civilian Ungraded Ratings" (NAV EXOS P-1005-596 (3/61)).

Sincerely yours,

W. A. BROCKETT,
Captain, USN,
Commander.

Encl: (1) NAVEXOS P-1005-596 (3/61)).

UNITED STATES CIVIL SERVICE COMMISSION
Washington 25, D. C.

BAR:MFK

June 21, 1961.

PENDING IN BAR.

Mr. Francis J. Dugan,
347 Dutton Road,
Sudbury, Massachusetts.

SUBJECT: Decision dated May 3, 1961, of the First U. S. Civil Service Region declining to accept an appeal from you under Section 14 of the Veterans' Preference Act in regard to your employment at the Boston Naval Shipyard.

Dear Mr. Dugan:

Reference is made to the appeal submitted to this Board in the above case.

Enclosed for your information is a copy of the material furnished in reply to the representations made by you in connection with this appeal.

You will be notified promptly when a decision has been reached in this case.

Sincerely yours,

E. T. GROARK,
Chairman Board of Appeals and Review.

Enclosure No. 13307 (Ltr. dated June 14, 1961, from agency).

FILE RETAINED IN BAR.

26 June 1961.

Chairman, Board of Appeals & Review,
U.S. Civil Service Commission,
Washington 25, D.C.

Dear Sir:

In reference to your letter dated 21 June 1961, File BAR:MFK, I am submitting the following comments:

The Board will note that Captain Brockett's letter to you, dated 14 June 1961, part of Enclosure 13307, *does not* state that I have not been reduced in rank. The Board will also note that in all correspondence to the Commission, the agency *has not* stated that I *have not* been reduced in rank. The Board will also note that the Regional Office Decision was also very carefully phrased to evade the making of the positive statement that I have been reduced in rank, and just as carefully phrased to evade making the statement that I have not been reduced in rank.

I am very confident that due to the Board's awareness of the responsibility invested in the Board by Congress, to enforce the provisions, intent and purpose of the Veterans' Preference Act, the Board will not allow these dilatory and evasive tactics to continue. I am certain that the Board's decision will *definitely* and unequivocally state that I have or have not been reduced in rank, in the Board's opinion, and that the Board's decision will give full and detailed reasons in support of their decision. I feel sure that the Board's sense of American Justice and fair play would not allow the continuation of the practice of hiding behind such equivocal statements as, "does not constitute a reduction in rank within the provisions of the Veterans' Preference Act", or, "Is not within the purview because a formal personnel paper was not issued by the Shipyard."

The Board will note that the Veterans' Preference Act states, in Section 14, that, "No permanent preference eligible—shall be—reduced in rank or compensation." The Act states in exceptionally, clear-cut, definite, unequivocal language that a Preference Eligible shall not be reduced in rank. The Act does not state that by informal methods

or special circumstances, the provisions, intent and purpose of the Act may be evaded and nullified by any agency. The Act simply states a Preference Eligible *shall not be reduced in rank*. Therefore, it must be clear to the Board that any reduction in rank of a Preference Eligible, regardless of how consummated, is, of necessity, in violation of the *provisions, intent and purpose* of the Act.

The Board will note that the agency's letter of 14 June 1961, states, "the action affecting Mr. Dugan", which is an admission by the agency that an action has been taken, even though it has not been formalized by a personnel action form being issued.

The Board will note that the agency's letter also states that I am performing the duties of Master Mechanic described in the "Definitions of Civilian Ungraded Ratings, (NAVES P-1005-596 (3/61)), and that while the action that I am appealing was *initiated during November 1960*, and *placed in effect 1 February 1961*, this definition of Master Mechanic was not even written until *March 1961* and distribution to the activities was made at a *much later date*.

I ask the Board to refer to the comments made in my letter to the Board, dated 29 May 1961, in Section 4, 4a, 4b, and 4c.

I wish to point out to the Board that I *am not* performing the duties of Master Mechanic, as stated in NAVEXOS P-1005-596(3/61). The Group Master position, since 1 February 1961, is the highest level of ungraded supervisor with the Navy job structure, and he has the final authority within the shop structure to confirm, reject, approve or change any action initiated by subordinate personnel, including those actions initiated by the Master Shipfitter, the Head of Shops 11/26, or Master Mechanic 11/26, whichever hat it suits the Navy Department's convenience for me to wear at the time. The Group Master position has the authority in all areas listed in NAVEXOS P-1005-596 (3/61), including trade and production. Previous documents and incidents submitted by me, and the statements made in the 1st Regional Decision, will conclusively establish this to the Board's satisfaction; however, if the Board desires, I will be glad to submit still further documents and

incidents to show that I am not performing the duties of Master Mechanic or Master Shipfitter. The Master Shipfitter position, prior to 1 February 1961, had the final authority in all these areas, and was also the highest level of ungraded supervisor within the shop structure.

I would also ask the Board to note that whether or not (and I am not) I am performing the duties of Master Mechanic should be immaterial and irrelevant. I am appealing my reduction in rank from the specific position of *Master Shipfitter*, Boston Naval Shipyard, as described in "*Request for Amendment to Activity Schedule of Wages*", NAVEXOS 3473, as requested by OIR Notice 12250 of 26 June 1957, and submitted by the Boston Naval Shipyard as, I quote, "*The attached is a complete and accurate description of the duties and responsibilities of this job*", and that to this date, the subject position description has not been rewritten or amended, (Exhibit hh), and the Board will note that the agency letter *does not* attempt to certify that I am performing the duties of Master Shipfitter.

The Board will also note that in the following references and cross references therein, it has been held that the policy and regulations in effect *at the time action is effected* is binding on subject agency:

a. *United States Reports*

Watson vs U.S., Volume 355, Page 14.

Service vs Dulles, Volume 354, Page 363.

Accardi vs Shaughnessy, Volume 347, Page 260.

The Board will note that, prior to 1 February 1961, the Boston Naval Shipyard had fifteen (15) Master's positions in the basic trades or shops in the Production Department, and the Master Shipfitter position was one of these positions. The subject fifteen (15) positions were all in organizational level #3, and all reported directly to and were responsible directly to the Production Officer position in all areas. The reorganization initiated by the BuShips Shop Grouping Program, subsequent to 1 February 1961, has resulted in the following redistribution of the subject fifteen (15) positions: Five (5) of these are now Group

Master positions, and are still in organizational level #3, still report directly to, and are directly responsible to the Production Officer position in all areas; Two (2) of these are now retained in organizational level #3 as Master of their basic trade or shop, still report directly to and are directly responsible to the Production Officer position in all areas, and have not had their positions changed in any respect; the remaining Master positions are now Head of Shop positions, are now in organizational level #4, and *do not* report directly to and *are not* responsible directly to the Production Officer position in all areas. These remaining positions now report to and are responsible directly to a lower level of supervision that they were organizationally equal to prior to 1 February 1961.

The Head of Shop designation in the Production Department is distributed as follows: Five (5) Group Masters with concurrent designation as Head of their parent shop and further concurrent designation of Master of their basic trade or shop for pay rate purposes; Six (6) formerly equivalent Master positions now designated as Head of Shop for the definition of subordinate authority and responsibility, and concurrent designation of Master of their basic trade or shop for pay rate purposes; One (1) former Foreman, Shop 51, redesignated as Head of the new Shop 36 for authority and pay purposes; Three (3) Chief Quartermen redesignated as Head of Shop for purposes of authority and responsibility, and concurrently retaining the Chief Quartermen rating for pay purposes. The remaining Master and Foreman positions in the Production Department are distributed as follows: Two (2) Master positions remain unchanged in duties, etc., and Five (5) positions are now subordinate to their respective Head of Shop.

I ask the Board to note that the position of Head of Shop in this shipyard, and others, is now receiving three different levels of pay for the same position designation of Head of Shop. Some are receiving Masters' pay rate, some are receiving Foremens' pay rate, and some are receiving Chief Quartermens' pay rate, a difference in pay rate of approximately \$4000.00 per annum for the same position designation of Head of Shop. The Board will also note that the position of Head of Shop is concurrently in different organi-

zational levels, some are in organizational level #3, and some are in organizational level #4. This is based on the premise that the Chief Quartermaster, as Head of Shop, are considered to be on the same level as the remaining Heads of Shops. If the premise is false, then they must be considered to be at level #5. It is then apparent that the same position designation of Head of Shop is concurrently in at least two and possibly three different organizational levels, ranging from #3 to level #5 within the same organization.

The Board will also note that some of the Foreman positions, that were not designated as Head of Shop, are now in organizational level #5, and exercise a lesser degree of responsibility and authority, and yet they are now receiving a greater pay rate than Chief Quartermasters designated as Head of Shop. This has the rare result that the position that is lower in organizational level, and has a lesser degree of duties, etc., is in the extremely fortunate position of receiving *more pay for less responsibility!!!!*

The Navy Department and the 1st Regional Office of the United States Civil Service Commission have been aware of these conditions for a lengthy period of time; however, to the present date, there are no indications, to my knowledge, that either of these have initiated any appropriate administrative action to correct them. In my opinion, this is a deliberate, flagrant violation of law, Civil Service Regulations, and NCPI. Apparently, neither the Navy Department nor the 1st Regional Office intends to initiate any action to fulfill and discharge the sworn responsibilities vested in them to enforce the laws, Civil Service Regulations, and NCPI's, and, specifically, the *provisions, intent and purpose* of the Veterans' Preference Act. Apparently, they intend to continue to tacitly condone and endorse the continued violation of law, etc., by adopting a "do-nothing" approach, until and unless they are forced to properly discharge the sworn responsibility by higher authority.

Sincerely yours,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

17 July 1961.

To: Board of Appeals & Review
U.S. Civil Service Commission
Washington, D. C.

From: Francis J. Dugan
Building 104, Structural Shops 11/26
Boston Naval Shipyard
Boston, Massachusetts

SUBJ: Appeal of Regional Office Decision, dated 3 May 1961, File HG :emb or File BAR :MFK

1. Since the effect and nature of this adverse action is continuing, I am submitting the following information to the Board while the investigation is still in process so as to enable the Board to complete their findings on additional evidence as it develops during the investigation.

2. I am submitting the following information to further establish and substantiate even more conclusively to the Board that (1) I have been adversely effected by being reduced-in-rank and (2) I *am not* performing the duties of Master Shipfitter, as described in "Request for Amendment to Activity Schedule of Wages", NAVEXOS 3473, as requested by OIR Notice 12250 of 26 June 1957; I *am not* performing the duties of Master Mechanic, as stated in NAVEXOS P-1005-596 (3/61), even though the Boston Naval Shipyard Commander, Captain Brockett, has had the unmitigated effrontery to, in my opinion, deliberately and falsely certify that I am performing the Master Mechanic duties, in his letter to the Board, dated 14 June 1961. I *am not even* performing the duties of Head of Shop 11/26, as they are stated in the organizational charts submitted by the activity with Captain Brockett's letter to the Commission, dated 23 February 1961.

3. As Master Shipfitter, Master Mechanic, or even as Head of Shops 11/26, (apply the choice of title to suit whatever facts the Navy Department is attempting to evade or disguise at the time), the most important distinguishing and critical feature of the position is the responsibility to determine adequate and proper manpower needs for the completion of major job projects on schedule. The best

of facilities, machinery, material and unlimited funds, etc., are just so many inanimate objects, unless the MANPOWER is available in adequate and proper numbers and skills to utilize the other factors in a properly directed and coordinated program to meet the productive aims of the organization.

4. The following incident will clearly illustrate to the Board that my duties and responsibilities, in regard to determining the manpower needs of the shops, *supposedly* still under my direction, have been ACTUALLY completely and effectively removed from my position (in any of my three titles), and that the determination of the manpower needs for the shops, supposedly under my direction, is now made by the Group Master, Structural Groups Shops 11-17-26 position, and that the Group Master position makes the final recommendation in regards to the manpower needs of Shops 11/26 to the Production Officer, without consulting or obtaining the recommendations of any of the subordinate supervision of Shops 11/26, including the Head of Shops 11/26. This incident will illustrate that all of the subordinate supervision, including the "Head of Shops 11/26", are notified of changes in manpower allotments only after all arrangements to change the shop manning are completed. The subordinate shop supervision is then told by the Group Master position, in this incident, that effective the end of July '61, eighty-eight (88) employees of Shops 11/26 would be laid off. The facts, as they occurred in this incident, are as follows:

- a. On 10 July 1961, I was informally asked my opinion, by the Group Master, relative to laying off employees of Shops 11/26. I stated that it was my opinion that we could not afford to release them at this time. The Group Master stated that, nevertheless, he wanted me to review the shop's commitments and then to further discuss the situation with him after the review was made. The conversation occurred at approximately 1030 hours on 10 July 1961. I alerted the Senior Supervision of Shops 11/26 to study their current and anticipated workload commitments and to report for a con-

ference at 1330 hours prepared to discuss the manpower requirements for their respective areas at that time. This conference was held and it was determined by the Senior Supervision of Shops 11/26 that, in view of our work commitments, we should not lay off any employees of Shops 11/26 at this time.

- b. On 11 July 1961, I toured work areas from 0730 to 0830 hours, and then returned to my office to review the recommendation and the results of the Senior Supervisory manning conference with my Foreman prior to submittal to the Group Master. While in the process of completing this review, I was informed informally (and not by the Group Master, or even at his direction, and without his knowledge) that a letter originated by the Group Master and signed by the Group Master had already been forwarded to the Production Officer, by messenger, recommending that eighty-eight (88) Shop 11/26 employees be laid off, effective the end of July. This is a repeated occurrence as the Group Master position has previously, as on this occasion, either completely ignored the recommendations of the subordinate supervision of Shops 11/26 in regards to manpower needs (See Exhibit "y" and "Listing of Documented Transfer of Functions, Page 4, Item 38)."
- When the incident referred to in Exhibit "y" occurred, the Group Master was presented with the recommendations of the subordinate supervision of Shops 11/26, relative to manpower needs. At that time, he stated approximately, "Well, it doesn't make any difference, *I have already* recommended to the Production Officer that 70 Shops 11/26 employees be discharged. The Board will note that, on both of these occasions, the subordinate Senior Supervision of Shops 11/26, including the Head of Shops 11/26, were ordered by the Group Master to review the manpower requirements, and expended a considerable time and effort, at a considerable cost and loss of time from their other duties, at the orders of the Group Master position and that, on both occasions, the Group Master position has made

the recommendation to the Production Officer prior to and without any consideration of the recommendations of the subordinate supervision of Shops 11/26, *including the position of Head of Shops 11/26*. The Board will further note that, on both occasions, the subordinate supervision of Shops 11/26, *including the position of Head of Shops 11/26*, have been notified only after the final recommendation to the Production Officer has been forwarded to the Production Officer. The Board will note that the Group Master position has not felt it necessary to notify the position of Head of Shops 11/26 that these recommendations have been made to the Production Officer until they are a "fait accompli". The Group Master position has not even felt, on both occasions, that, even as a courtesy gesture, the position of Head of Shops 11/26 should receive the recommendations first, and then let the Head of Shop position transmit the information to the shop's subordinate supervision.

- c. On 12 July 1961, at approximately 1430 hours, the Group Master telephoned the Personnel Supervisor of Shops 11/26 and ordered him to inform the subordinate supervision of Shops 11/26 that eighty-eight (88) Shop 11/26 employees were to be discharged at the end of July '61. This had the result that many of the supervisory positions, subordinate to the Head of Shops 11/26 position, were *officially* informed that Shops 11/26 were to lose eighty-eight employees prior to the Head of Shops position being officially and formally informed. I was, as Head of Shops 11/26, *officially informed* of this by the *Personnel Supervisor* of Shops 11/26 on 13 July 1961 at 0730 hours.
- d. On 13 July 1961, at approximately 1430 hours, I, as Head of Shop 11, was ordered by the Group Master to send thirty of the eighty-eight employees that were to be discharged as of the end of July to the Boiler Shop. These thirty employees were to be detailed to the Boiler Shop to work as employees of the Boiler Shop, effective 0730 hours on 17 July 1961. The

Board will note the following facts relative to this incident: (1) I was not asked by the Group Master, prior or subsequent to this order, if the manning review he ordered me to conduct on 10 July 1961 showed that I could release these thirty people. I was not even asked if the manning review showed that Shops 11/26 could lose eighty-eight people the end of July. I was not asked anything relative to the results of the manning survey. I protested to the Group Master that current commitments did not warrant the loss of these thirty employees now, or the eighty-eight at the end of July and was, nevertheless, ordered to send them to the Boiler Shop on 17 July 1961. The Board will note that, as Head of Shops 11/26, this was the first time that I received official notification direct from the Group Master that Shops 11/26 were to lose eighty-eight employees, effective the end of July 1961. A telephone call from the Head of Shop 41, relative to the detaching of these thirty employees established that all arrangements to detail the subject thirty employees to the Boiler Shop had been completed by the Group Master, *prior* to my receiving the order to send them, and again the Group Master completely ignored any possible recommendations, prior to and subsequent to the Head of Shops 11/26's position receiving the order to detail these thirty employees.

- e. Prior to 1 February 1961, the responsibility to make final recommendations to the Production Officer, relative to the manpower requirements of Shops 11/26 was the complete responsibility of the Master Shipfitter position and, as Master Shipfitter in full charge of two large, major, diversified production shops, I was performing all of the duties now performed by a Group Master position.
- f. The above incidents will further substantiate and establish to the Board that (1) My position has **ACTUALLY** been changed (downgraded) by the loss of grade determinant functions to the improperly established new position of Group Master, (2) I

am not performing the full duties of any of the three titles that the Navy Department has seen fit to concurrently assign to my present position, as the Group Master position has taken over grade determinant functions that are (according to Navy Department claims) supposedly my responsibility under either of my three titles and (3) I have been adversely effected in that I have been **ACTUALLY** and effectively reduced-in-rank by the loss of authority, responsibility, lowered organizational status, etc., resulting in a functional and substantial lessening of the "rank" of the position to which changed in relation to other positions in the immediate area of the supervisory relationship.

5. Exhibit "eeee"—This document was my notification of the date and manner of my involuntary relocation from the office I occupied as Master Shipfitter, to another office I would occupy as "Head of Shops 11/26". This other office, as befits my now subordinate status is much smaller and much more plain than either the office I occupied as Master Shipfitter, or the relocated office now occupied by the improperly established Group Master position. The following "Incident of the Venetian Blinds" will perhaps illustrate to the Board that, apparently, not all of my "major" decision making responsibilities have been removed from my three-titled current position. It is apparent that the following decision of mine must have been considered by the Group Master position to be of major importance, as he felt it was necessary to personally discuss it with me every other day, to decide whether I wanted venetian blinds or curtains installed in my relocated office, and emphasized that the decision was *completely* up to me and that he would order whichever I preferred. The Board will note that the Group Master's decision to discharge eighty-eight employees of Shops 11/26 was made during the same period of time, and that the Group Master did not feel that this decision was of such major importance that it should be discussed with me every other day, or even discussed at all; so, apparently, this must be considered as a minor decision making re-

sponsibility. The facts as they occurred in relation to the "Incident of the Venetian Blinds" are as follows:

- a. On 6 or 7 July 1961, the Production Officer and the Group Master toured the relocated office spaces of Shops 11-17-26, in Building 104. The Production Officer noted that in all the relocated office spaces, except that one occupied by the Head of Shops 11/26, and the one jointly occupied by the Foreman Ship-fitter, Foreman Welder and Chief Quartermen Sheet-metal Worker, the Group Master had had the forethought to order and have venetian blinds installed on all windows in every other office space. The Production Officer notified the Group Master that he thought I should have venetian blinds in my office and, if necessary, he would pay for them himself.
- b. On 10 July 1961, the Group Master informed me of the tour and the comments of the Production Officer, and then asked me to decide whether I wanted curtains or blinds and he would order what I wanted. I stated that I did not have any preference and that he could install either or none.
- c. On 12 July, 1961, the Group Master did not see fit to discuss or inform me of the already recommended change in the manpower levels of Shops 11/26; however, he did see fit to again ask me if I had decided to have curtains or blinds installed in my relocated office so that he could order them for me. I again stated that I did not have a preference and that he could order whatever he felt was appropriate.
- d. On 14 July 1961, the Group Master again did not mention the manpower changes; however, he did feel that the major item of venetian blinds warranted further discussion and again asked if I had decided if I wanted curtains or venetian blinds. It then became readily apparent to me that this was a decision that I must make entirely and completely by myself and assume the full consequences if I made the wrong decision. I stated, "If I must decide what I want, and only to prevent further discussion, install venetian blinds."

- e. Prior to 1 February 1961, the making of such important decisions was not the permissive responsibility of the Master Shipfitter, such decision making power was the complete responsibility of the Master Shipfitter.

6. Exhibit "ffff". This exhibit will further substantiate to the Board that government agencies are attempting, by various means, to evade the provisions, intent and purpose of the Veterans' Preference Act of 1944, and such attempts to evade the provisions of the Act by agencies are so prevalent and wide-spread that such practices are assuming the proportions of a national scandal. The Board will note that the action by the Navy Department, that has resulted in my reduction-in-rank is, in my opinion, a perfect example of an agency's attempt to flagrantly circumvent, by devious means, the provisions, intent and purpose of the Veterans' Preference Act. The Board will further note that the agency's attempt to repeal the provisions, intent and purpose of subject Act has been condoned by, and received the tacit approval of, the First Regional Office of the United States Civil Service Commission, in apparent disregard of the specific responsibility vested in them by the Congress of the United States to enforce the *provisions, intent and purpose* of the Veterans' Preference Act.

7. The National Association of Department of Defense Supervisors, Boston local, held a meeting on 28 April 1961. This meeting was attended by Captain Brockett, the Commander of the Boston Naval Shipyard. During the course of this meeting, Captain Brockett was asked, among others, the following questions, and gave the following answers:

- a. Question: Filling supervisory positions presently vacant, is it up to the Group Master or will the decision remain in the hands of the Shop Master as Head of Shop?

Answer: The Shop Master will make the recommendation to the Group Master with full cognizance of trade lines, etc.

The Board will note that the Group Master position now has the authority to make the final recommendation, at the Shop level, to the Production Officer, on matters relative to the supervisory requirements of the shops within his group. The Board will note that, prior to 1 February 1961, the Master Shipfitter position had the authority to make the final recommendation, at the shop level, to the Production Officer, on matters relative to the supervisory requirements of the large, major shops within his control. The Master Shipfitter was then performing exactly the same functions that is now performed by the Group Master.

b. Question: Will the non-group leading Shop Master's position be phased out?

Answer: Yes, chances are that Foremen will replace them in the future.

Page 3, the first paragraph of the "decision" given by the First Regional Office, dated 3 May 1961, establishes that the present Shop Masters will be replaced by Foremen, as vacancies exist in their positions. Captain Brockett's statement proves that he agrees with and has full knowledge of this fact. It must then be axiomatic that since I will be replaced by a Foreman position, I must now be ACTUALLY performing the duties equivalent to a Foreman position and it must also be clearly evident that Captain Brockett was fully aware of the fact, on 28 April 1961, that I am currently performing duties equivalent to a Foreman; nevertheless, Captain Brockett, on 14 June 1961, in his letter to the Board dated 14 June 1961, in my opinion, deliberately and falsely certified to the Board that I am performing (even though I am not) the full duties of the position of Master Mechanic, my number three position title. Since I am performing the duties equivalent to a Foreman position, and a Foreman position is admittedly, by all parties to this action, subordinate to my former position of Master Shipfitter, it must be evident that, as Head of Shops 11/26, I have been subjected to a reduction-in-rank. It must also be evident that any reduction-in-rank of a Veteran Preference eligible is within the purview and in violation of the *provisions, intent and purpose* of the

Act. The Act clearly and simply states that a veteran *shall not be reduced-in-rank*; therefore any reduction-in-rank must, of necessity, violate the *provisions, intent and purpose* of the Act. To illustrate to the Board that the subject reduction-in-rank is widely recognized by all levels in this activity, I relate the following conversation between two of this activity's employees. These employees are mechanics or artisans in Production Department shops:

QUESTION: What is this Head of Shop business anyway?

ANSWER: What's the matter, don't you know, that's just a fancy new title for Foreman!!

8. The following is submitted to the Board to further establish and substantiate that apparently the Navy Department is aware of and recognizes, at the Department level, that the Masters that have not been reassigned to Group Master positions now occupy a subordinate position to either the former position held as Shop Master of the basic trade or shop, or the presently additional improperly established Group Master position. The following incident occurred recently at the Portsmouth Naval Shipyard. Previous to the implementation of the BuShips Shop Grouping Program, and reassignment of individuals to the improperly established position of Group Master at the Portsmouth Naval Shipyard, it was the standard and time-tested procedure of many years usage to formally invite all Shop Masters to attend the official commissioning of naval ships at that activity. Previous to the improper establishment of the Group Master position, it was recognized by that activity that all Shop Masters, as a Navy Department policy, held positions that were held to be equal in all respects to each other. At the recent commissioning ceremony held at that activity, *subsequent* to the partial implementation of Shop Grouping, and the designation of individuals to the improperly established positions of Group Master, the Board will note that the individuals that *were not* designated as Group Master *were not* invited to the commissioning ceremonies. This is a clear-cut and specific substantiation that this activity

fully recognizes that the non-Group Masters now occupy a subordinate position and have been effectively reduced-in-rank by informal down-grading ACTUAL position change and, as perhaps befits their now subordinate status and rank, and in recognition of such subordinate status and rank, it was necessary and proper that the established procedure of long usage be purposely amended to exclude the non-Group Masters from the invited listings.

9. A trade jurisdictional dispute has been the subject of much discussion between the Group Master position, the Production Officer and the affected unions. This dispute involves the proper allotment of work to the proper trade and shop in accordance with trade jurisdictional agreements and past precedent. This subject has been under consideration by the above parties for the past *two months*; however, neither the Group Master nor the Production Officer have mentioned this item to me, even once, during the past two months. The area of work involved is one in which the present Group Master has, on several occasions in the past, with each new Production Officer, repeatedly attempted to have reassigned from Shop 11 trades to Shop 17 trades, and with this activity's preceding Shipyard Commander succeeded in having this work reassigned on a trial basis for one year, after many previous failures. On all of the previous discussions over the years, the Master Shipfitter was immediately informed by the Production Officer and the Shipyard Commander, when necessary, of these discussions and requested to participate and present Shop 11's views and recommendations relative to this *trade* jurisdictional dispute. The proper settlement of this dispute will directly effect the employment levels, employee and supervisory morale, etc., of the respective shops involved; however, the Board will note that, to date, I *have not* been informed by either the *Group Master* or the *Production Officer* relative to this subject. It may now be that, by present higher authority, this subject is felt to be in the *minor* decision making category, or perhaps the present Production Officer prefers to receive only one possibly biased view and recommendations, and thus making the reaching of a decision less complicated, or possibly it

is still further concrete substantiation to the Board that, (1) My authority, duties, etc., have been transferred to the Group Master position (by informal personnel action) and I have been subjected to an adverse action, by ACTUAL position change (down grading) with a resultant functional and substantial loss of status and rank in relation to formerly equivalent supervisory positions in the immediate area, (2) that the Production Officer and Group Master are fully aware of this loss and reduction-in-rank and status, and in official recognition of this subordinate reduced status and rank, it is not necessary to consider my views and recommendations on such *minor* matters as shop employment levels, trade jurisdictional agreements, and other comparable *minor* subjects, previously submitted to the Civil Service Commission and (3) that I am not performing the full duties of either of the three titles presently assigned to my current position.

10. I will forward additional evidence and documents to the Board as it develops while the investigation continues, to enable the Board to be in possession of and give consideration to all facts available at the time the Board gives its decision.

11. Since the passage of time is continually resulting to my further disadvantage, I would sincerely appreciate some indication from the Board as to when I may expect the Board to forward its decision to me.

Sincerely yours,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

Enclosures:

1. Exhibit "eeee"—Memo—Group Master to Supervision—Office Spaces—dated 23 June 1961.
2. Article—Boston Sunday Globe—Veterans' Preference—dated 25 June 1961.

EXHIBIT "ffff".

UNITED STATES CIVIL SERVICE COMMISSION
Washington 25, D.C.

BAR:MFK

August 2, 1961.

PENDING IN BAR.

Commanding Officer,
Boston Naval Shipyard,
Boston, Massachusetts.

SUBJECT: Decision dated May 3, 1961, of the First U. S. Civil Service Region declining to accept an appeal from Mr. Francis J. Dugan under Section 14 of the Veterans' Preference Act in regard to his employment at your installation.

Dear Sir:

This refers to the appeal submitted to this Board in the above case.

The purpose of this letter is to give you an opportunity to comment on the statements made in support of the appeal. Therefore, enclosed for whatever further comment, or rebuttal, you may care to make is a copy of the appeal. Your reply, *in duplicate*, should be forwarded to this office within ten (10) days of your receipt of this letter.

When a decision has been reached in this case, you will be notified promptly.

Sincerely yours,

E. T. GROARK, *Chairman,*
Board of Appeals and Review.

Enclosure No. 13371 (Ltr. dated June 26 and ltr. dated July 17, 1961, with enclosures, from appellant).

FILE RETAINED IN BAR.

BOSTON NAVAL SHIPYARD
Boston 29, Mass.

(150)
LL/Dugan, F.J.

August 17, 1961.

Mr. E. T. Groark,
Chairman, Board of Appeals and Review,
United States Civil Service Commission,
Washington 25, D. C.

Dear Mr. Groark:

In reply to your letter of 2 August 1961, relative to the appeal of Mr. Francis J. Dugan under Section 14 of the Veterans' Preference Act in regard to his employment at this Shipyard, you are advised that the position of the Shipyard, as set forth in my letter of 23 February 1961 to the Director of the First United States Civil Service Region, remains unchanged.

Sincerely yours,

W. A. BROCKETT,
Rear Admiral, USN,
Commander.

Copy to: Chief, BUSHIPS (720), Chief, OIR (215).

September 12, 1961.

To: Board of Appeals & Review,
U. S. Civil Service Commission,
Washington, D. C.
FROM: Francis J. Dugan,
Building 104, Structural Shop 11/26,
Boston Naval Shipyard,
Boston, Massachusetts.
SUBJECT: Appeal of Regional Office Division, dated 3 May
1961, File HG:emh or File BAR:MFK.

(1) Since the effect and nature of this adverse action is continuing, I am submitting the following information to the Board while the investigation is still in process so as to enable the Board to complete their findings on additional evidence as it develops during the investigation.

(2) Exhibit "gggg". This very pertinent document is submitted to the Board as conclusive proof of the statements I have previously submitted to the Civil Service Commission in the areas as enumerated below. This conclusive proving of my previous statements is contained in Exhibit "gggg" which is an official Navy document.

(a) I previously informed the Commission that this position was illegally created in that the position (Group Master) was not properly established (NCPI 310-2.2); the extent or criteria of the duties were not defined (NCPI 531-3.3 and 3.4) when the title was put into effect and the position was illegally filled by the misassignment of individuals to Group Master positions.

(a1) Exhibit "gggg" Section 1. Purpose is conclusive evidence verifying the above statements and exposing the belated efforts of the Navy Dept. to, in my opinion cover up their tracks for their deliberate and premeditated sins of omission and commission committed in the implementation of the Shop Grouping Program and is an attempt to provide some semblance of pseudo-legality to their past, present and future actions in the implementation of this program.

(b) I have stated and substantiated by Exhibit "b" and

others, that this Grouping Program was a permanent innovation.

(b 1) Exhibit "gggg" Section 2, Background is conclusive proof of the permanent nature of the Shop Grouping *Reorganization* Program.

(c) I have stated and substantiated that as Master Shipfitter in full charge of Shops 11/26 that I was performing all of the duties now performed by a Group Master position.

(c 1) Exhibit "gggg" Section 3, Rating Titles, Item 5 under "Title" Master Mechanic (Structural Group) and a simple comparison of the duties listed in Exhibit "hh" with enclosures as compared to the duties for Master Mechanic (Structural Group) as shown in Enclosure 1 to Exhibit "gggg" will conclusively and irrefutably establish the truth of the above statement.

(3) I have stated and substantiated that the functions, duties, etc. performed by a Group Master position have been taken directly from the now subordinate Master positions within the respective groups. The Navy Dept. has stated that the Group Master position has extracted the additional responsibilities from the Production Officer position and that each Shop Master retains the same responsibility and authority of functions which his shop continues to perform. The Navy statements were made in a letter from Capt. Brockett to the 1st Civil Service Regional Director dated 23 Feb. 1961 and again stated in a letter from Capt. Brockett to the Board of Appeals and Review dated 14 June 1961.

A simple direct unbiased and impartial item by item comparison by the Board of the duties of Master Mechanic (Structural Group) as listed in Enclosure 1 to the Exhibit "gggg"; with the duties of Master Shipfitter as listed in Exhibit "hh", will clearly establish to the complete satisfaction of any unbiased and impartial investigation that *each and every one* of the duties listed in Enclosure 1 to Exhibit "gggg" were the full and complete responsibility of the Master Shipfitter position prior to 1 Feb. 1961.

I have stated to the Board that the grade determinant functions of the Master Shipfitter position had been trans-

ferred to the illegally created position of Group Master, and I submitted documentary proof to establish the truth of my statement. Exhibit "gggg" is submitted as conclusive proof in the Navy Dept's own words on official Navy documents that my previous statements are factual.

I will again notify the Board that the Navy Dept. since the beginning of implementation of the Shop Grouping Program in Naval Shipyards has been operating the Shop Grouping Program by the extensive use of "Misassignments". I am sure that the Board is aware that the use of "Misassignments" is contrary to law, Civil Service Regulation, and NCPI, and it is my understanding that it is the duty and responsibility of the United States Civil Service Comm. to initiate appropriate action to correct such conditions when and where they are known to exist within the United States Civil Service System. These conditions have existed in Naval Shipyards for perhaps longer than two years to date and yet during all this lengthy period of time, to the best of my knowledge, and since the conditions still exist in all Naval Shipyards, the United States Civil Service Comm. has apparently, in my opinion, tacitly condoned this continued violation of law, Civil Service Regulation and NCPI by the Navy Dept., since, to the best of my knowledge, the United States Civil Service Comm. has still not corrected these conditions.

The specific "Misassignments" are that individuals in every Naval Shipyard are now performing the duties of Group Master and/or Shop Head by written order of the respective shipyard Comdrs. It is my opinion, that a simple inspection and/or investigation by the appropriate authority in the Civil Service Commission will conclusively establish the long time and continued existence of these numerous "Misassignments".

It is my opinion that one of the reasons for the use of these "Misassignments" is a deliberate premeditated action by the Navy Dept. to enable the Navy Dept. to freeze the individuals now performing these respective duties of Group Master and Shop Head in these positions. If and when the Navy Dept. properly establishes these ratings, it is my opinion that they will attempt to accomplish this

by the use of methods similar to the following: for the Group Master position, it will be alleged (without stating that it was done illegally or improperly) that the individual has been performing the duties for an extended period of time is thus qualified, and a rerating would be simply a recognition of this fact. The other alternate might be that the Navy Dept. will hold an impartial exam for the position, except of course the Navy Dept. would want to give extra or higher experience credits to the individuals for the illegal experience. For the Head of Shop, the Navy Dept would want to rerate them to a lower position because they were not and have not been performing the higher grade duties for an extended period of time, they had allowed Their positions to deteriorate and a rerating would be in simple recognition of this fact, and would claim that these individuals had no appeal rights because they allowed their position to erode.

(4) I will ask the Board to note, for use in this and any other actions it may be necessary for me to file in connection with the current adverse action of which I have been the unfortunate victim, *I have not* allowed my position to erode; I filed prompt action with the Commission, and any erosion that has taken place in my position has been over my protests to the Commission and the continued erosion is only possible because of the inordinately excessive length of time required by the Commission to complete its investigation of this simple action and render a decision.

I will ask the Board to note that this appeal was initiated more than seven months, and more than 31 weeks ago, and as yet I have had no indication from the Board when I may expect a decision.

I have repeatedly stated to the Commission that this action is continuing and that the passage of time is resulting in actions that are evolving to my further disadvantage. I will ask the Board to note that if such a program of delay and postponement of a final resolution of my appeal action had been deliberately prearranged between the Navy Dept. and the Commission, that it would or could not be more effective, than it is under the present condition. I would therefor sincerely appreciate any effort made by the Board

to expedite this investigation, and a statement from the Board as to when I may expect their decision.

I will ask the Board to note that if the final resolution of this appeal action is further delayed until after the Navy Dept. finally completes the action of belated legalization of the establishment of the title and position of Group Master, as a belated corrective action of the series of improper and illegal actions taken by the Navy Dept. in their use of the title and the designation, by written order of the Shipyard Comdrs., of individuals to perform the duties of Group Master (and by virtue of the responsibility and authority of their positions, in my opinion, must have known that they were creating Misassignments, in violation of law, Civil Service Regulation and NCPI). It is my opinion, that if it is then subsequently determined that I have been adversely affected, the Navy Dept. will then attempt to allege that the Group Master position would not then be in my competitive level and that I had no rights in claiming the position. I will ask the Board to note that at the time (1 Feb. 1961) that the title Group Master was illegally placed in effect in the Boston Naval Shipyard and the position was illegally filled that 1) I was organizationally, *at least*, equal in every respect to the individual so designated. 2) I was performing all of the duties now performed by a Group Master. 3) I had been informed by the Production Officer that I was qualified to fill the position and that I would undoubtedly be selected the next time it came up. 4) Under the criteria defined in NCPI 351.4-2b, 351.2-5(e)(q)(t), and 351.9.4(b)(c) my non-selection as Group Master was an adverse action and in violation of the Veterans Preference Act. 5) Under the criteria defined in the above NCPI's, I am now and will then be qualified to again perform the duties of a Group Master position. 7) This appeal action and any subsequent actions resulting from this adverse action effected on 1 Feb. 61 will be based on the policies and conditions existent in the Boston Naval Shipyard at the time the action was effected and my appeal initiated.

(5) Enclosure 1 of Exhibit "gggg" states under purpose, "To direct and coordinate through *subordinate shop heads*".

This is a definite unequivocal statement on an official Navy Dept. document that as Shop Head *I am subordinate* to the Group Master position.

It is then axiomatic that *I am now subordinate* to all Group Master positions in rank.

I have previously substantiated to the Board that I was not only, at least, organizationally equal in every respect to all individuals now illegally designated as Group Masters, but that I was performing all of the duties that a Group Master position is now performing.

Capt. Brockett's letter to the 1st Civil Service Regional Director dated 23 Feb. 61 in the last paragraph on page 2 defines the Shipyard's definition of the ultimate test of the elements forming the basis of rank, and states that these elements remain unchanged by my designation as Head of Shop.

I have previously stated and substantiated (see Exhibit 7 page 29) and Exhibit "gggg" now by official Navy documents conclusively proves, my responsibilities have been *lessened*, my authority has been *diminished*, my grade determinant functions have been *transferred* to another position, my *status* is now *subordinate* to formerly equivalent positions, my rate of pay has remained the same, my seniority has remained the same as it would have if I were performing apprentice duties again. The following items not substantiated by Exhibit "gggg" have also occurred my *prestige* and *reputation* have been irreparably damaged.

Exhibit "gggg" will be conclusive to the Board that in *every element of rank*, as defined by the Navy Dept., except pay, and seniority which cannot be changed, *my position has been substantially reduced*.

The Regional decision states that the Commission has previously issued decisions that particular position changes constituted reductions in rank where there was no loss of grade or salary involved, in such cases the Commission has found that there was a functional and substantial lessening of the "rank" of the position to which changed with relation to other positions in the immediate area of the supervisory relationship.

I have previously substantiated and Exhibit "gggg" con-

clusively establishes that I have by my designation as Head of Shop suffered a functional and substantial lessening of "rank" in relation to other supervisory positions in the immediate area, in that I am now subordinate to numerous individuals illegally misassigned to perform the duties of Group Master and I was prior to my designation as Head of Shop at least their equal in rank in every respect, and further was at that time performing all of the duties now performed by a Group Master position.

(6) I call the Board's attention to the following items, that are in my opinion, indications of, "bad faith," on the part of the Navy Dept. in relation to this appeal action and the implementation of the Shop Grouping *Reorganization*.

(a) Officials of supervisory organizations and union officials have stated to me and other interested parties, that the Navy Dept. representatives have repeatedly assured them that the Group Master position was not intended to and would not have any jurisdiction of technical trade performance, that the Shop Head would be the final technical authority on trade functions, and the Group Master would control the grouped shops on Personnel, Administrative, and Shop Planning Functions only.

I have previously substantiated and Exhibit "gggg" conclusively establish that the above policy has been completely reversed and refuted by official Navy documents.

(b) Exhibit "gggg" and Exhibit "hhhh" have apparently been in the Boston Naval Shipyard since shortly after 17 Aug. 61 and 15 May 61 respectively. I received my copies of these notices from a source outside the shipyard and have requested the Shipyard Comdr. to provide me with copies.

The Board will note that these notices were not distributed to interested organizations, affected individuals, or to me as pertinent documents in my appeal action, and that the distribution, if any, was apparently very restricted.

I must assume that the Navy Dept. or the Shipyard did not notify the Commission of the existence of these documents and concurrently submit a revision of their previous

stand to the Commission, even tho these documents almost completely refute their previous stand. Since I have reason to believe that the Commission is sending a copy of everything that I submit to the Commission to the Shipyard; I believe that the Commission would be extending the same courtesy to me. Since I have not been notified of any further documents being submitted by the Shipyard it must be that none have been submitted. I would suggest that the Board investigate to determine if the Navy Dept. has any other pertinent documents that the Commission has not been made aware of, and take steps to insure that any future pertinent documents are forwarded to the Commission as they are issued to the activities, so as to ensure that your decision is based on the fully developed and available facts existent at the time the decision is eventually made.

(8) The documentary evidence I have submitted to the Board in substantiation of my statement, the almost complete lack of documentary evidence submitted by the Shipyard and the above indications of, in my opinion, "bad faith", by the Navy Dept. should, in my opinion, create in the Board's mind a serious doubt as to the credibility and veracity of the present Navy Dept. statements to the Commission. The Navy Dept. has, in my opinion, effectively demonstrated that their statements of yesterday are not necessarily true today, and that possibly the statements the Navy Dept. makes today, may not be true tomorrow.

I therefore cannot fully accept the Navy Dept's assurances that the now subordinate Masters that are designated as Shop Heads will be *permitted* to retain their present rate and continue to be paid the same rate of pay as the Group Master position. Particularly when I fully realize that in my opinion, Civil Service investigation will readily determine that such retention would constitute a permanent misassignment in violation of law, Civil Service Regulation and NCPI, and that both the Navy Dept. and the Civil Service Commission have the duty and responsibility to correct such conditions to insure that individuals are receiving pay and compensation commensurate with the

actual rank grade and responsibilities of the position occupied, and not by the title of the position as the sole criteria. (or in this case one of my three titles.)

(9) I am forwarding the below listed Exhibits as enclosures for information to the Board, to enable the Board to base their decision on all currently available facts.

a) Exhibit "gggg" and Enclosure 1 to Bu Ships Notice 12531, Ser. 720-2014 dated 17 Aug. 61.

b) Exhibit "hhhh"—BuShips Notice 5450, Ser. 731-224 dated 15 May 61.

c) Letter from Master Shipfitter to Shpyd Comdr. dated 7 Sept 61—Request for Pertinent Documents—Exhibit "iii".

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Mass.

BAR:WES:sbj

September 21, 1961.

Mr. Francis J. Dugan,
Building 104, Structural Shop 11/26,
Boston Naval Shipyard,
Boston, Massachusetts.

Dear Mr. Dugan:

This is in reference to your letter of September 12, 1961, concerning your appeal from the decision of the First U. S. Civil Service Region that your alleged reduction in rank, effective February 1, 1961, by the Boston Naval Shipyard, was not within the purview of the Veterans' Preference Act of 1944, because no adverse personnel action had been effected.

The Board receives a large number of appeals and endeavors to complete the processing of cases generally in the order of their receipt. Please be assured that every effort is made to reach a decision in each case at the earliest practicable date consistent with the proper adjudication of the appeal.

Sincerely yours,

E. T. GROARK,
Chairman, Board of Appeals and Review.

6 October 1961.

To: Chairman
Board of Appeals & Review
U.S. Civil Service Commission
Washington, D. C.

From: Francis J. Dugan
Bldg. 104, Structural Shop 11/26
Boston Naval Shipyard
Boston 29, Massachusetts

SUBJ: Letter dated 21 Sept 61, File BAR:WES:sbj

1. Subject letter states that the action that effected my "reduction-in rank" was found by the Regional Office to not be within the purview of the Veterans' Preference Act of 1944, because no adverse personnel action had been effected. I must agree with the Regional Office that the predominant and outstanding feature in relation to the Standard Personnel Action Forms #50 and #52 and my appeal action is the conspicuous absence of these forms. The absence still prevails in spite of the fact that I have established by documentary evidence that my former position of Master Shipfitter was drastically reduced in rank, authority, functions and responsibilities on 1 February 1961. Such drastic changes as those shown by a comparison of my present duties, with the duties I performed prior to 1 February 1961 as Master Shipfitter make it a *mandatory* responsibility of the Navy Department and the U.S. Civil Service Commission to initiate appropriate action to ensure the issuance of a Standard Personnel Form 50 or 52 to reflect the change of duties, etc., and to ensure that the individual occupying the reduced position is receiving the lesser pay and compensation commensurate with the present **ACTUAL** duties, rank, etc., of the position, and not the greater pay and compensation commensurate with the former duties, rank etc. of the same unchanged position title (except for the two additional titles previously made known to the Commission).

2. Naval Civilian Personnel Instruction 290.2-3b delegates the authority to Commanding Officers to effect personnel actions. I received an official personal letter from

the Shipyard Commander, Captain Brockett, on 1 February 1961. This letter designated me, as of 1 February 1961, as Head of Shops 11/26, with the concurrent loss of rank, functions, etc., as previously outlined and substantiated to the Commission. Mr. F. J. Simon received an official personal letter from the Shipyard Commander, Captain Brockett, on 1 February 1961. This letter designated Mr. Simon, as of 1 February 1961, as Group Master, Structural Group, Shops 11-17-26, with the concurrent assumption of the functions, etc., previously performed by the Master Shipfitter position, as already substantiated to the Commission.

3. The two letters referred to in the preceding paragraph constitute *direct written orders*, and are official Navy documents from the Commander of the activity to two subordinate employees of the activity to *officially* notify the subject employees that effective as of 1 February 1961, the drastic interchange of rank, duties, functions, etc., as stated in these two letters, and further outlined and substantiated to the Commission by additional documentary evidence, would be *officially consummated*.

4. The authority and responsibility vested in the Shipyard Commander by the Power of Command has the result, at least within the activity, that the issuance of these *official* (NCPI 290.2-3b) non-standard personnel actions are as completely and fully effective in accomplishing the position changes desired by the activity, as the issuance of a Standard Form 50 or 52 would be. The issuance of the non-standard personnel actions in preference to the Standard Form 50 or 52 by the Shipyard Commander is, in my opinion, a deliberate, premeditated, improper and immoral administrative procedure adopted by the activity in a flagrant attempt to avoid exercising the activities responsibility to notify the proper authorities as to the extent of the changes effected in the affected positions, and so evade the activities responsibility to put into effect the mandatory, necessary personnel actions to downgrade or upgrade, as appropriate, the affected positions, thus evading the activities responsibility to insure that the individuals in the affected positions will receive pay and compensation com-

mensurate with the ACTUAL duties of the changed positions, and is, in my opinion, a further attempt to disguise or hide the apparent fact that the Shop Grouping Reorganization has been implemented in apparent disregard of the laws, Civil Service Regulations and NCPI's, relating to Misassignments, the Veterans' Preference Act, and other areas as previously stated to the Commission.

5. I will ask the Board to note that, in my opinion, the Regional Office, by their decision, has not only apparently endorsed these conditions, but has apparently condoned them, in a possible attempt to avoid their own responsibility to initiate appropriate corrective action to eliminate such known long term and continued apparent violations of law, Civil Service Regulations and NCPI's from within the U.S. Civil Service System.

6. Your letter has not provided me with any indication as to when I may reasonably expect a decision from the Board. Your letter does not state that my action is being processed in the order of receipt, and possibly this may account for what appears to be an excessive delay in the adjudication process. I have previously stated to the Board that the passage of time is continually working to my further disadvantage. I desire to initiate, if required, the next phase of this appeal action as promptly as possible, to minimize the effects of the length of time required to obtain a final decision to the action. I would, therefore, sincerely appreciate specific answers to the following queries:

- a. Has my appeal action been processed in accordance with normal procedure, in the order of receipt?
- b. Is my appeal action currently being processed in accordance with normal procedures?
- c. Will my appeal action be continually processed to a conclusion in accordance with normal procedure?
- d. Does it normally require more than five months for the Board to complete the investigation and adjudication process for an appeal action?
- e. What is the time normally required to complete such actions?
- f. If the time taken to resolve my action is greater than

normal, what are the special circumstances in my action that account for the excessive time required?

- g. Is there a time limit by which the Board must complete their action on my appeal, or does the Board have the option of withholding a decision for as long as is convenient to the Board?
- h. What is the time limit, if any?
- i. May I reasonably expect to have received a decision from the Board by any of the following dates? Please specify the earliest and the latest of these dates: 1 November 1961, 1 December 1961, 1 January 1962, 1 June 1962, 1 January 1963, some later date?

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

BAR:IS:bj

October 27, 1961.

Mr. Francis J. Dugan,
Building 104, Structural Shop 11/26,
Boston Naval Shipyard,
Boston, Massachusetts.

Dear Mr. Dugan:

This refers to your further appeal from the decision of the Director, First U. S. Civil Service Region, issued on May 3, 1961, holding that your appeal from an order of the Commander, Boston Naval Shipyard, dated February 1, 1961, was not within the purview of Section 14 of the Veterans' Preference Act of 1944.

The Board of Appeals and Review has fully considered the entire appellate record in the case, including all representations made by you and all representations made on behalf of the employing agency.

The content that the order of the Shipyard Commander, which instructed you, as Head of Shops 11/26, to report directly to and to be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops and for such other additional duties as Mr. Simon, as Group Master, might assign to you in connection with the over-all shop grouping plan, was an adverse decision which reduced you in rank within the meaning of Section 14 of the Veterans' Preference Act. In support of that contention, you state that you are no longer directly responsible to the Shipyard Production Officer but report to him through Mr. Simon and that some of your former duties and responsibilities have been assigned to Mr. Simon as Group Master. You have also made numerous representations with respect to the Bureau of Ships program for the grouping of Production Department shops in each naval shipyard, with respect to the implementation of the shop-grouping program at the Boston Naval Shipyard, and with respect to your own

personal experiences in connection with that implementation. While some of these representations are clearly intended to support your contention that you have been reduced in rank, many of them relate to other matters, such as the legality of the reorganization, the establishment and classification of Group IVa positions, the routing and distribution of shipyard communications, the consideration given your recommendations by the Group Master, etc. Such other matters are within the administrative jurisdiction of the Navy Department rather than of the Civil Service Commission, and questions concerning them which you may wish to have resolved by competent administrative authority should be submitted to appropriate officials of the Navy Department through the employee grievance procedures which the Navy Department has established for that purpose. The Board's consideration of your current appeal must necessarily be limited to the one question within the Commission's appellate jurisdiction, that is, whether the Shipyard Commander's order to you on February 1, 1961, reduced you in rank within the meaning of Section 14 of the Veterans' Preference Act of 1944.

The record shows that prior to the order of February 1, 1961, you held the official rating of Master Shipfitter and that as Master Shipfitter you were the civilian supervisor with highest rank in Shops 11 and 26. The record also shows that following the order of February 1, 1961, you continued to hold the official rating of Master Shipfitter and that as Master Shipfitter you continued to be the civilian supervisor with highest rank in Shops 11 and 26. It is true that the order of February 1, 1961, interposed a new level of supervision between you and your former immediate supervisor, the Production Officer, specifically, it provided a new civilian supervisory level of Group Master over the grouping of Shops 11, 17, and 26; however, the addition of this new level of supervision in the organizational structure of the Production Department did not affect your rank as the highest civilian supervisor in Shops 11 and 26. Accordingly, the Board considers that the mere change in organizational structure directed by

the Shipyard Commander's order of February 1, 1961, did not reduce your rank as Master Shipfitter and ranking civilian supervisor in Shops 11 and 26.

The Board has given very careful consideration to your contention that some of your former duties and responsibilities have been assigned to Mr. Simon as Group Master. So far as the record shows, your contention is valid only with respect to supervision of certain administrative and support services which were formerly maintained in each shop but which have since been consolidated for the shop group under supervision of the Group Master. In the opinion of the Board, supervision over such administrative and support services constituted a minor part of your duties and responsibilities and did not have any significant effect upon the rank of the position of Master Shipfitter. Therefore, the Board does not consider that the loss of those duties and responsibilities indicates that you have been reduced in rank within the meaning of Section 14 of the Veterans' Preference Act.

The Board notes that the Navy Department has administrative authority and responsibility for its internal organization and for assigning duties and responsibilities to its civilian employees. It is evident that, as you claim, the reorganization of the Production Departments in Naval Shipyards to introduce shop grouping is not yet fully implemented. In fact, so far as the appellate record shows, the position of Group Master over Shops 11, 17, and 26 in the Boston Naval Shipyard has not yet been formally established or rated. Likewise, so far as the appellate record shows, no formal change has been made in the established position or rating of Master Shipfitter. As has been indicated above, the Board does not consider that the changes in organization and in the assignment of duties and responsibilities as they have affected your position as Master Shipfitter evidence any reduction in your rank. The Board cannot, of course, adjudicate the present matter on the basis of speculation as to the ultimate outcome of the reorganization. In the event that your rank or compensation is reduced by some future administrative action of your employing agency, you will then be entitled to exer-

cise of a right of appeal to the Commission under Section 14 of the Veterans' Preference Act of 1944.

The decision of the First U. S. Civil Service Region held that your present appeal is not within the purview of Section 14 of the Veterans' Preference Act of 1944. For the reasons set forth above, it is also the decision of the Board of Appeals and Review that your appeal from an order of the Commander, Boston Naval Shipyard, dated February 1, 1961, is not within the purview of Section 14 of the Veterans' Preference Act and that the Civil Service Commission does not therefore, have jurisdiction to adjudicate the appeal. Under Section 22.503 of the Commission's regulations, the decision on an appeal to the Board shall be final, and there is no further right to appeal.

For the Commissioners:

Sincerely yours,

E. T. GROARK,

Chairman, Board of Appeals and Review.

10-30-61

Re Case of Mr. Francis J. Dugan.

Distribution:

Commander, Boston Naval Shipyard, Boston 29, Massachusetts.

Mr. Anthony Tieso, 198 Manchester Street, Mattapan, Massachusetts.

First Region:

Legal Counsel, Office of Industrial Relations, Department of the Navy, Washington 25, D. C.

Honorable Harold A. Donohue, House of Representatives.

Honorable John W. McCormack, Majority Leader, House of Representatives, Washington 25, D. C.

Honorable Benjamin A. Smith, II, United States Senate.

Honorable Leverett Saltonstall, United States Senate.

7 November 1961.

MEMORANDUM

FROM: F. J. Dugan, Master Shipfitter,
Boston Naval Shipyard,
Structural Shop, Bldg. 104,
Boston 29, Massachusetts.

To: Chairman, Board of Appeals & Review,
U.S. Civil Service Commission,
Washington 25, D.C.

Gentlemen:

Copies of the decision relative to my appeal action have been in the Shipyard since 2 November 1961 and, as yet, I have not received a copy of the decision from the Board. As one of the parties directly concerned, I would appreciate, at least, the common courtesy of receiving a copy of this decision direct from the Board.

I would appreciate your sending this copy to my home address.

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

Noted 11-20-61.

8 November 1961.

FROM: Francis J. Dugan,
Structural Shop 11-26,
Boston Naval Shipyard,
Boston 29, Massachusetts.
To: Chairman, Board of Appeals & Review,
U.S. Civil Service Commission,
Washington 25, D.C.

Gentlemen:

This is to advise you that the decision in my appeal action was placed in the "In" box on my desk on 8 November 1961 sometime during the latter part of the morning. As the envelope containing my copy of the decision was not postmarked, I have no way of knowing when it was mailed.

Please accept my thanks for the belated receipt of this decision.

F. J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

Noted 11-20-61.

December 26, 1961.

John W. Macy, Jr., Chairman
U.S. Civil Service Commissioners
Washington 25, D.C.

Dear Mr. Macy:

In accordance with attorney's recommendation, I am submitting this letter to you as Chairman of the Civil Service Commissioners to request that the United States Civil Service Commissioners review the recent decision, File Bar:IS:sbj, dated 27 October 1961, that was issued to me relative to my reduction-in-rank by the Boston Naval Shipyard in violation of the provisions, intent and purpose of the Veterans' Preference Act of 1944, Sections 12 and 14.

It is my understanding that the Commissioners have exercised their discretionary authority to review previous decisions issued by the Board of Appeals and Review, and your favorable consideration of this request is solicited for what are, in my opinion, the following valid reasons:

- a. The interests of "equity and good conscience".
- b. The impact of this decision is national in scope, as my action originated in Boston, Mass., and there are three other similar appeals originating, respectively, in Portsmouth, New Hampshire, Brooklyn, New York and Honolulu, Hawaii.
- c. This decision has an immediate effect (in relation to optional retirement, bumping, retreating, transfer of functions, erosion of duties, etc.) on approximately 360 high level supervisory positions in the various naval activities.
- d. The future application of these procedures to other Departments and other levels of supervision in the various naval activities would increase the number of employees effected by many times 360.
- e. The application of these procedures by other government agencies would increase the number of employees effected innumerable.
- f. The Veterans' Preference Act of 1944 has not been clarified, as yet, by the Commission as to what does constitute a reduction-in-rank within the purview of the Act,

as the Regional Office decision stated that the Commission has not yet defined reduction-in-rank although they have, from time to time, issued decisions relative to reduction-in-rank. It would, in my opinion, be of direct, immediate benefit to the Commission, myself, all appellants, and all government agencies if reduction-in-rank was clarified and defined by the Commission at this time so that all parties (Commission Officials, appellants and agencies) to the current and any future similar actions would be fully aware of their rights and/or responsibilities under the definition as issued by the Commission. The issuance of this definition would clarify and delineate the principle involved by the *provisions, intent and purpose* of the Veterans' Preference Act in reference to reduction-in-rank, and would, undoubtedly, result in considerably reducing the number of appeal actions submitted to the Commission relative to reduction-in-rank.

g. The necessity of appellants initiating action to request the already over-burdened United States Federal Courts to resolve an issue that could be settled administratively may be obviated.

h. The necessity of an individual or group of individuals to expend private funds to resolve an issue in the already over-burdened Federal Courts that should be equitably resolved administratively may be obviated.

i. Past experience over the years, as effectively illustrated by the many items and editorials appearing in various magazines and newspapers protesting the prevalence of such abuses, indicates that many or all government agencies have and are consistently attempting to develop principles, procedures and tactics that will enable subject agencies to continue their persistent attempts to continually process position changes by methods designed to evade, abrogate or emasculate the *provisions, intent and purpose* of the Veterans' Preference Act. The decisions as issued by the Regional Office and the Board of Appeals and Review have, in effect, provided subject agencies with an outlined procedure to evade the *provisions, intent and purpose* of the Veterans' Preference Act. These decisions have, in effect, informed subject agencies

that the United States Civil Service Commission will not consider the application of the outlined principles, procedures and tactics to be in violation of the *provisions, intent and purpose* of the Veterans' Preference Act, and the Commission would uphold such actions and not consider it necessary to order the agencies to take any corrective action; thus, in effect, the agencies have "carte blanche" to initiate actions to attempt to further evade the *provisions, intent and purpose* of the Veterans' Preference Act.

If the Commissioners decide that a review of my appeal action is warranted, it is requested that, as part of your investigative procedure, you give favorable consideration to initiating action to have representation from both parties appear before you concurrently for questioning, so that unsupported statements presented by either party may be discarded and that all other statements made by either party can be properly clarified as to exactly what is meant by and contained in each statement, so that the points in issue can be settled on a basis of fact, and not on statements and/or titles that are phrased so as to; imply that which is not, to conceal that which is, or possibly be designed to be deliberately ambiguous or misleading.

Enclosures 1 and 2 are submitted for your information and assistance in your review of the previous decisions.

F. J. DUGAN,
347 Dutton Road
Sudbury, Mass.

Enclosure:

1. Comments re Board of Appeals & Review decision.
2. Resume of Basis of Appeal.

ENCLOSURE 1

Comments on decision issued by U. S. Civil Service Commission Board of Appeals and Review re: Francis J. Dugan, dated 27 October 1961—Reduction in Rank—Violation of Veterans Preference Act of 1944, File BAR:IS:subj.

The following comments are, in my opinion, based on fact and documents previously submitted to the Commission. The enumerated pages and paragraphs refer to the Commission's letter to me of October 27, 1961.

1. Page 1, Paragraph 3, lines 1 to 17.

1a. The formal written order of the Shipyard Commander was, and is, an adverse decision in violation of the *provisions, intent and purpose* of the Veterans Preference Act. This formal written order has resulted in my reduction-in-rank, and any reduction-in-rank, regardless of how accomplished, is within the purview of Section 14 of the Veterans Preference Act.

2. Page 1, Paragraph 3, lines 18 to 21.

2a. I stated that I am no longer directly responsible to the Production Officer. I am now directly responsible to the Structural Group Master and the Group Master now has had transferred to his position, the final and policy determining authority and responsibility for all areas and operations of Shops 11/26. This final and policy determining authority, etc., was formerly vested in the position of Master Shipfitter. The Structural Group Master is now the Senior Civilian Supervisor, with full line authority over Shops 11-26, to exactly the same extent, that the Master Shipfitter formerly possessed full line authority over Shops 11/26, and the Master Shipfitter position is now subordinate, in line authority in all areas and in all aspects of authority and responsibility, to the Structural Group Master, relative to Shops 11/26.

3. Page 1, Paragraph 3, lines 27 through 39.

3a. I have not, and I do not now question the legality of the Shop Grouping Reorganization. I have stated and

documented that the implementation of this reorganization was, in my opinion, accomplished in many ways by the use of improper, and/or illegal procedures in violation of law, Civil Service Regulations and NCPI, including the establishment of Group IVa positions. The improper and/or illegal procedures that were and are still being used to implement this reorganization were brought to the Commission's attention to demonstrate to the Commission, that not only did the Navy Dept. violate the provisions, intent and purpose of the V. P. A., but that they used improper and/or illegal means to do it, and to insure that the Commission was aware of such inequities.

The routing and distribution of Shipyard communications and orders was referred to the Commission to illustrate to the Commission that, *as is right and proper*, in recognition of the fact that my former position has been reduced in organizational level, reduced in reporting level and is now clearly reduced to being subordinate to the Group Master position for all areas of Shops 11/26 operations; that higher authority now routes all orders and communications, relating to all areas and operations of Shops 11/26 direct to the Group Master position. Prior to my position change, such orders etc. were routed direct to the position of Master Shipfitter, as the Master Shipfitter formerly possessed exactly the same authority, now transferred to the Group Master position, and the Master Shipfitter position was the highest civilian position possessing direct authority over Shops 11/26. These items were intended to illustrate to the Commission, some idea of the great extent, that my former position has been actually reduced in all areas.

The reference to the Commission of the consideration given my recommendations was to illustrate to the Board, that as Master Shopfitter with the complete and final civilian authority over all areas and operations of Shops 11/26, my recommendations would have been the recommendations acted on by the Production Officer. The recommendations to the Production Officer over such areas of Shops 11/26 operations as: employment levels, trade jurisdiction, training, safety, etc. are now made by the

Structural Group Master as the highest civilian position with full and complete and final authority over Shops 11/26. Since the title and position of Master Shipfitter was reduced in organization and reporting levels, and authority and declared subordinate to the Group Master position for all areas of Shops 11/26 operations, my recommendations are frequently not asked for, or if my recommendations are asked for, the final decisions are made and final action consummated prior to my having an opportunity to submit the recommendations. I fully recognize that my position, as Master Shipfitter, is now subordinate, in all respects to that of the Group Master in relation to the operation of Shops 11/26. The Group Master is now the highest civilian position with full and complete final authority over Shops 11/26, *and it is not legally required* that the Group Master position gave consideration to the recommendations of the second highest civilian position, with limited authority, over the operations of Shops 11/26. I felt that this situation would indicate to the Commission, some idea of the extent to which the authority etc., that was formerly in the position of Master Shipfitter has been either transferred to the Group Master position, and/or drastically reduced, in my present actual position.

4. Page 2, Paragraph 4, lines 45 to 62.

4a. Prior to Feb. 1, 1961 the Structural Shop was composed of a group of two shops, namely Shop 11 and Shop 26. I then held the official rating of Master Shipfitter, and at that time, performed all of the duties, exercised all of the authority, and had all of the responsibility for the operations of all areas of the two shops that then composed the group of shops, then known as the Structural Shops. I, as Master Shipfitter, was the highest Senior Civilian Supervisor, with full, complete and final authority, etc., at the civilian level over all areas and operations of Shops 11/26. My position was then in Organizational Level 3, and my position then reported directly to a supervisory position in Organizational Level 2. Specifically, the Military Dept. Head, a U. S. Navy Captain. Prior to Feb. 1, 1961, there was not any higher existent civilian position

that exercised any authority, or had any responsibility, or had any connection with the operations of the group of Shops 11/26, known as the Structural Shop

I was then a member of Shop 11 (my identification number is 11-11980) and was the highest Senior Civilian Supervisor with full authority and responsibility in Shop 11. I *was not* a member of Shop 26 (I do not have a Shop 26 identification number). However, I was the highest Senior Civilian Supervisor in charge of Shop 26, with full authority and responsibility for Shop 26. The Foreman Welder position was occupied by a member of Shop 26, who was and still is, the Senior Civilian Supervisor in Shop 26, but he was responsible to and reported directly to the Master Shipfitter position, relative to all of the operations of Shop 26. I then made the final decisions, at civilian level, for all areas of Shop 26.

Prior to 1 Feb. 1961, as Master Shipfitter, the highest civilian position possessing authority over the operations of the shop grouping then known as the Structural Shop 11/26, I, as Master Shipfitter, possessed all the authority and responsibility and performed all of the functions now possessed by a Group Master position. This is clearly established by the fact that in some of our other Naval shipyards, the then position of Master Shipfitter, in full charge of the grouping of shops then referred to as the Structural Shop 11/26, was at the time of the implementation of the Shop Grouping Reorganization laterally reassigned as Group Master Structural Group; the Structural Shop 11/26 was redesignated as the Structural Group Shops 11/26; there were no other shops added to or deleted from the former Structural Shop to form the new Structural Group; the Master Shipfitter was retained in Organizational Level #3 in and by his reassignment as Group Master; the Master Shipfitter in his reassignment as Group Master, still reports directly to the Production Officer in Organizational Level #2; the Master Shipfitter by his reassignment as Group Master did not have any other authority, responsibility, duties, functions, etc., added to his position, but is performing exactly the same duties, etc.; to exactly the same extent, he performed them prior to the

Shop Grouping implementation in these other activities. In this activity in Boston, the Master Sheetmetal Worker, and now, Structural Group Master, prior to 1 Feb. 1961, did not possess any authority etc., or have any connection, in any areas with the shop grouping then known as the Structural Shop 11/26. The Master Shipfitter and the Master Sheetmetal Worker were then, as Navy Dept. policy, considered to be organizationally equal positions, in every respect, even though the responsibilities, etc., of the Master Shipfitter position were much greater in scope, as the grouping of shops, known as the Structural Shop 11/26 was by far the largest single unit under the administration of a single Master position in the Production Dept., and was the most diversified as to number of trades and operations performed, etc., in the Production Dept., as previously illustrated to the Commission.

The Master Sheetmetal Worker, prior to 1 Feb. 1961, was a member of and the Senior Civilian Supervisor of Shop 17, a relatively small or medium-sized shop in naval activities, a shop of less than $\frac{1}{3}$ the size of the group of shops then known as the Structural Shop 11/26. The Master Sheetmetal Worker did not then have any authority, etc., over any other shops in the Production Department, and specifically he did not possess any authority over the shop grouping known as the Structural Shop 11/26; at that time, he was not connected in any way with the operations of the then Structural Shop 11/26 grouping.

Effective as of 1 February 1961, the Master Sheetmetal Worker *was misassigned by formal written order* of the Shipyard Commander to *permanently* fill the position and perform the duties etc., of Group Master Structural Group, Shops 11.17.26 with full, complete and final authority, etc., over all shops within the new Structural Group; including the formerly independent shop grouping of Structural Shop 11/26. The Master Sheetmetal Worker, in his misassignment as Group Master, is still a member of and the Senior Civilian Supervisor of Shop 17. He is now, in addition, by formal written order of the Shipyard Commander, the Senior Civilian Supervisor in charge of Shops 11/26, tho he is not a member of either Shop 11 of Shop 26; similarly,

I am not a member of Shop 26. The former Master Sheet-metal Worker, in his misassignment as Group Master, is now the highest Senior Civilian Supervisor that possesses full, complete and final authority over all areas and operations of the formerly independent Structural Shop 11/26 grouping. The now Group Master has full, complete and final authority, to approve, reject, modify, or otherwise change, any action initiated by the subordinate supervision, of the formerly independent Shops 11/26, relative to any area of the Shops 11/26 operations, including the actions initiated by the formerly autonomous Master Shipfitter position, that was by written formal order of the Shipyard Commander misassigned as Head of Shops 11/26, concurrent with the misassignment of the Group Master.

The Navy Dept. has stated, and I have documented by official Navy Dept. documents, that the selection as Group Master would not constitute a promotion for the individual selected, in accordance with this stated policy, the Group Master position has been retained in Organization Level #3 and still reports to the Production Officer. The Group Master, as Senior Civilian Supervisor in charge of Shops 11/26, is now the highest civilian position with full, complete and final authority over all areas and operations of Shops 11/26, and as Senior Civilian Supervisor in charge of Shops 11/26, now exercises the full, complete and final authority, etc., over Shops 11/26 that the formerly independent Master Shipfitter position exercised, and he possesses such authority, etc., to exactly the same extent as formerly possessed by the Master Shipfitter, in relation to the operations of Shops 11/26.

Effective 1 Feb. 1961, the Master Shipfitter was misassigned by formal written order of the Shipyard Commander to the new position, within the new Structural Group, of Head of Shops 11/26, and ordered that I would exercise the limited authority, etc., of Head of Shops 11/26, as of that date. I was PERMITTED to retain my official title as Master Shipfitter for pay purposes and to enable the Navy Dept. to attempt to disguise the actual reduction of the position in regard to authority, status, etc., as previously documented. My current title of Head of Shops 11/26

is now used on all orders, communications, etc., is now shown on the revised Organization Charts, that were recently submitted to BuShips, *and the position of Master Shipfitter is not shown* on these revised Organizational Charts, and I am now only allowed to exercise the greatly reduced authority, etc., over the operations of Shops 11/26 that the position of Head of Shops 11/26 has been allowed to contain, as a position subordinate to the Senior Civilian Supervisor in charge of Shops 11/26, or the Group Master's position. I now also possess the title of Master Mechanic, given to me at a later date. The Master Mechanic title was freely given to me, to enable the Navy Dept. to attempt to hide the actual differences in authority, etc., between the Master Shipfitter and Head of Shops 11/26 positions, and to enable the Navy Dept. to attempt to evade the requirements of the Annual Ungraded Maintenance Review to further attempt to hide this difference, and so attempt to disguise the fact that violations of the Retention Preference Regulations and the Veterans' Preference Act, Sections 12 and 14 had taken place.

As Master Shipfitter, Head of Shops 11/26 or Master Mechanic, I am still the Senior Civilian Supervisor that is also a member of Shop 11, in Shop 11. *I am not* still the Senior Civilian Supervisor in charge of Shop 11, and *I am not* now the highest Senior Supervisor with full, complete and final authority over all the operations of Shop 11, as I was prior to 1 Feb. 1961.

I am still not a member of Shop 26, and in addition, I am *no longer* the Senior Civilian Supervisor in charge of Shop 26, as I was prior to 1 Feb. 1961. The Group Master is now the Senior Civilian Supervisor in charge of Shop 26, with full, complete and final authority, etc., over all areas of Shops 11/26. As Group Master, or Senior Civilian Supervisor in charge of Shop 26, he is now the highest Senior Civilian Supervisor with full, complete and final authority, etc., over Shops 11/26.

The now empty official title of Master Shipfitter and the actual position and title of Head of Shops 11/26, now reports directly to the position of "Senior Civilian Supervisor in Charge of Shops 11/26", or Group Master, for all

areas of operations of Shops 11/26, and is completely subordinate to the Group Master position in all respects.

The official title of Master Shipfitter, and the actual position and title of Head of Shops 11/26 have now been reduced to Organizational Level #4, prior to 1 Feb. 1961 I was in Organizational Level #3.

The Master Sheetmetal Worker is not a member of either Shop 11 or Shop 26; however, in his capacity as the highest Senior Civilian Supervisor in Charge of Shops 11/26, or Group Master, he now possesses and exercises all of the authority, etc., over Shops 11/26 that was formerly in the Master Shipfitter position. He now possesses this authority, etc., over Shops 11/26 in the exact same extent, manner and relationship to Shops 11/26 that the Master Shipfitter position, as a non-member of Shop 26 formerly exercised this authority over Shop 26.

It must now be extremely clear and simple to understand that prior to 1 Feb. 1961, the position of Master Shipfitter *was* the highest Senior Civilian Supervisory position with full, complete and final authority over the grouping of Shops 11/26, then known as the Structural Shop 11/26.

It must also now be extremely clear and simple to understand that effective as of 1 Feb. 1961, the position of Group Master *is now* the highest Senior Civilian Supervisory position with full, complete and final authority over the former grouping of shops then known as the Structural Shop 11/26, and that they have now been merged into the new Structural Group, under the direct supervision of the Group Master.

It must then be equally clear, since it is axiomatic, that I, as the title Master Shipfitter, the actual position and title of Head of Shops 11/26, or my most recent title Master Mechanic, *am now* the second highest Senior Civilian Supervisor with limited authority, etc., over Shops 11/26. It must be equally clear that as the *now* second highest Senior Civilian Supervisor of Shops 11/26, I do not *now* possess the full, complete and final authority, etc., I formerly possessed, and that I *now* possess only the limited authority, etc., that has been *allowed* to remain in the actual position

and title of Head of Shops 11/26, within the new Structural Group, and that I have been reduced-in-rank.

It must *now* also be very evident that prior to 1 Feb. 1961, I *was* the highest ranking Senior Civilian Supervisor within the grouping of Shops 11/26, then known as the Structural Shop 11/26, and that I am *now* the second highest ranking Senior Civilian Supervisor in Shops 11/26 within the new grouping of Shops 11-17-26 and now known as the Structural Group.

Perhaps I misunderstand the Commission decision, but it appears to me that the wording of the decision is attempting to establish the fact that: A Master Shipfitter position that is reassigned as Group Master (as has happened in other Naval shipyards) without any change in duties, reporting levels, organizational level, is not subordinate to any other civilian position, and so on. The Commission feels that such a position does not have a higher rank and possesses greater authority, etc., than a Master Shipfitter position that has had all these factors reduced by designation as Head of Shop within a new shop grouping. Certainly, the Master Shipfitter reassigned as Group Master is still unquestionably the highest ranking Senior Civilian Supervisor within Shops 11/26, and since the Commission states that I, with only the empty title of Master Shipfitter, am still the highest ranking Senior Civilian Supervisor in Shops 11/26, even tho I am now allowed to perform only the actual duties, etc., of Head of Shops 11/26, within Shops 11/26. It must then be that the Commission, somehow, arrived at the conclusion that the positions are equal to each other in rank, and all major areas of responsibility, functions, etc., and this is patently an erroneous conclusion.

Since it is the stated documented policy of the Navy Department, when the Shop Grouping Reorganization was implemented, that the selection of an individual as Group Master would not constitute a promotion for the individual so selected, and in other Naval activities, the Master Shipfitter has been laterally reassigned as Group Master without any change in duties, etc., it is evident that a new level of supervision has not been interposed between my former position and the Production Officer, but rather, that in this

activity, the Group Master position has been a lateral mis-assignment that has retained the same organization and reporting levels as his previous position, and my mis-assignment has been a downgrading action that has reduced the organization and reporting levels, authority, etc., of my formerly autonomous position.

What the Board refers to as, "the mere change in organizational structure", has resulted in the former position of Master Shipfitter, being reduced in organizational and reporting levels: being reduced to a position subordinate to the Group Master position, within the new Structural Group, for Shops 11/26 operations; I have had the former Master Shipfitter position, and now just official title, reduced in authority, responsibility, functions, etc., by the transfer to the Group Master position of the grade determinant and many other functions of the former Master Shipfitter position; being reduced to the second highest Senior Civilian Supervisor with limited authority, etc., over the operations of Shops 11/26, from my former position as the highest "Senior Civilian Supervisor in Charge" of all areas of operations of Shops 11/26, when the Structural Shop was an autonomous group; being reduced to my present actual position and title of Head of Shops 11/26 and ordered that I will now exercise only whatever limited authority, etc., that has been allowed to remain in the position, Head of Shops 11/26. These losses from my former position are a matter of record, as I have previously submitted Navy documents to the Commission to substantiate and establish each and every loss.

Previous Commission decisions in regard to reduction-in-rank actions have been decided in favor of the appellant on the basis that a functional lessening of rank in relation to other and formerly equivalent positions in the immediate supervisory area had occurred. This decision is apparently based on a decidedly more narrow interpretation, as it only compares my former position to my present actual position and completely ignores the difference in former and present supervisory relationship. This decision also quotes the erroneous statement that I am still the highest civilian supervisor in Shops 11/26 as the basis for their mistaken

opinion. I have previously submitted Navy documents to the Commission to substantiate and establish that: I am now subordinate to a number of individuals that are now in Group Master positions, and that the individuals that occupy these positions were formerly my organizational equals; that I am now organizationally equal to many individuals now holding the rating of Foreman and Chief Quartermaster, and these ratings were clearly subordinate to my former position; that former Master Mechanics that were not misassigned as Group Masters are now performing duties equivalent to a Foreman position, and are being replaced by Foreman positions as vacancies occur; that my authority, etc., in my new position, has been drastically reduced in all areas by the transfer of my former functions, etc., to the Group Master position; that my present position does not call for the higher levels of personal contact as my former position; that I do not possess the authority to exercise my personal judgment and initiative to the extent of my former position; that I have been subjected to a loss of status, prestige and irreparable damage to my reputation. The foregoing factors should have substantiated and established to the Commission that a functional and substantial lessening of rank in relation to other supervisory positions in the immediate area, has been the result of my current misassignment as Head of Shops 11/26.

5. Page 2, Paragraph 5, lines 63-76.

5a. The Board has given long, and as they state, "very careful consideration", to my contention that some of my former duties, etc., have been transferred to the Group Master position. Apparently, had the Board also given thorough consideration to my contention, it may have determined, that as a matter of record, I had submitted Navy documents to substantiate and establish the transferring of several dozens of my former functions, etc., that are now in the Group Master position. A partial listing of these transferred functions is enumerated in Enclosure 2 of my letter to the Commission Chairman.

The Board refers to the Shop Planning, Personnel and

Clerical segments of my former organization in the former Structural Shop Grouping that have been completely removed from my position, and are now staff to the Group Master position, and states "Supervision over such administrative and support services constituted a minor part of your duties and responsibilities."

I am at a loss to understand the logic of the Commission in discounting the effect attained by the elimination of my responsibilities for the administrative procedure, which resulted from the establishment of the Group Master's position over me. It is accepted as axiomatic that the whole constitutes the sum of the parts; elimination of any part must, correspondingly, lessen the whole. Likewise, elimination of the administrative responsibilities previously assigned to my position as Master Shipfitter, having lessened my position level, it must be considered to constitute a reduction in rank. Whether such lessening meets the criterion of being "substantial", as cited by the Commission in finding for "reduction in rank" in previous cases, is the crux of the issue. I am of the opinion that the stand taken by the Commission in discounting the effect attained by the elimination of my responsibilities for the administrative portion of my position, is unwarranted and unjust, for reasons as described following:

The position of Master Shipfitter in a naval shipyard, as the highest level of Senior Civilian Supervision in full and complete charge of an autonomous shop, or group of shops, as the position of Master Shipfitter in the Boston Naval Shipyard was prior to 1 Feb. 1961, was one of many facets, embodying trade, technical, and administrative phases, coordinated into attaining productive results through the utilization of manpower assigned to the shop.

Since the trade qualifications for the activities under my supervision had been pre-established, the leadership, the direction, the development, and the utilization of manpower to meet the shops' assignments became the key requirements for effective operation. Morale and proper attitude expressed by the manpower are fully as important for attaining results as is trade knowledge. Administrative techniques, the handling of the Shop Planning Section and

assigned personnel, the Administrative Section and assigned personnel, and the Personnel Section and the assigned personnel, are fully as important as technical knowledge. This is recognized in the position description of the duties of the Master Shipfitter, Boston Naval Shipyard, as described in "Request for Amendment to Activity Schedule of Wages", NAVEXOS 3473, as requested by OIR Notice 12250 of 26 June 1957, and submitted by the Boston Naval Shipyard as, I quote, "The attached is a complete and accurate description of the duties and responsibilities of the job." (Exhibit hh.) Where it is a matter of fact that those elements of my position relating to shop planning, personnel management and administrative procedures by far overshadow those portions of the position associated with trade background, the position of Master Shipfitter was primarily that of an administrator. As an administrator, I was required to do many things to properly manage my former organization. I defined objectives; I set policies; I designed and controlled organizational structure; I prescribed work flow and procedures; I provided plant equipment, material, and services; I selected my staff; I reassigned personnel or increased or decreased total force as required; I selected the right kind and numbers of personnel; I established the pattern of processing and route of production and administrative shop operations; I established the policy for dealing with problems of discipline, welfare and morale; I was accountable for the control of money, labor, materials, equipment, and the development and maintenance of records. *I was the highest civilian position with full accountability for all the above factors.* It was then necessary that I control what the Board has called "certain administrative and support services" to adequately and properly perform the duties of my former position. It is only through the full control of these areas that adequate plans, procedures, and controls can be developed and implemented to properly perform and be responsible for all of the foregoing factors. When proper consideration is given to the fact that *the final and policy-determining authority and responsibility for all of the foregoing, has been transferred to the position of the now*

Senior Civilian Supervisor in charge of Shops 11-17-26, or Group Master, it is difficult to find any logic in the statement of the Board, that these are minor duties, etc., and have not resulted in my reduction-in-rank.

It is extremely illogical to, in effect, state that these functions, when transferred from my former position, are minor in nature and do not affect my rank, and yet when these functions are transferred to the new Group Master, they become of sufficient major importance to warrant his retention in, his and my former, and now only the Group Master's, rank and status in Organizational Level 3. It has been previously substantiated and documented that the additional functions now performed by a Group Master position, were derived from, and only from the formerly independent Shop Master's positions, that are now in subordinate positions within the respective new groups. Were the Commission to give careful weight to these job elements, from my former position description, and actually study my former job requirements, I am confident that my duties connected with Shop Planning, Personnel, and Administration, would be reestablished as of major, rather than minor importance.

6. Page 2. Paragraph 6, lines 77 to 96.

6a. The Board states that no formal change has taken place in the position of Master Shipfitter, and that the position of Group Master has not been formally established. Apparently the Board means that no Official Personnel Action Form 50 or 52 has been issued, and the reasons for this have been previously detailed to the Commission. The actual position changes have been placed in full effect and the new positions have been filled, *on a permanent basis*, since 1 Feb. 1961. These actual position changes were placed in full effect by a formal letter from the Shipyard Commander to the subordinate employees, to officially and formally notify the subordinate employees, that effective as of 1 Feb. 1961, they would henceforth perform the duties, etc. of Head of Shops 11/26 and Group Master respectively. The authority and responsibility that is vested in the Shipyard Commander by the Power of Command, and the NCPI,

at least within the activity, insures that the Shipyard Commander's letter is a *formal non-standard personnel action form* that is as completely and fully effective in immediately accomplishing the desired actual position changes, as the issuance of any Form 50 or 52 could be. The use of the Shipyard Commander's letter, however, does offer the Navy Department a better opportunity to attempt to evade the requirements of the Retention Preference Regulations, and Sections 12 and 14 of the V. P. A., and also offers the Navy Dept. a much greater degree of latitude in the arbitrary selection of individuals to be redesignated to the respective positions.

The fact that the reorganization has not been fully implemented is not the issue. Regardless of the current degree of implementation, *I have by formal written order* of the Shipyard Commander, had my position of Master Shipfitter, redesignated as Head of Shops 11/26 and have been forced to suffer the actual losses from my former position, as documented to the Commission. Since 1 Feb. 1961, I have been actually reduced-in-rank in violation of the Veterans Preference Act, Sections 12 and 14. My appeal action and any subsequent appeal is based on the date the adverse action to me was initiated and placed in full effect, and not on whatever date the Navy Dept. eventually decides to ratify or legalize a *previously accomplished formal non-standard personnel action that placed the actual position changes in immediate, full and complete effect, on a permanent basis, by formal written order of the Shipyard Commander, on 1 Feb. 1961.*

F. J. DUGAN.

RESUMÉ

OUTLINE OF SHIPYARD ORGANIZATION, PREVIOUS AND SUBSEQUENT TO THE SHOP GROUPING REORGANIZATION PROGRAM AND THE BASIC ELEMENTS SUBSTANTIATING THE VIOLATION OF THE VETERANS PREFERENCE ACT OF 1944, SECTIONS 12, AND 14. APPEAL OF FRANCIS J. DUGAN VS. BOSTON NAVAL SHIPYARD ADVERSE ACTION—REDUCTION-IN-RANK.

ORGANIZATION PREVIOUS TO SHOP GROUPING

1. Previous to the Shop Grouping Reorganization, the Boston Naval Shipyard, Production Department, Production Shops, were under the control of approximately fifteen (15) SHOP MASTERS of the basic trade or rate, such as Master Shipfitter, Shops 11/26; Master Sheetmetal Worker, Shop 17; Master Woodworker, Shop 64; etc. Each Shop Master was the Senior Civilian Supervisor in full and complete charge of all areas in his respective shop or shops, and each was answerable directly to the Production Officer, as their immediate supervisor and Department Head. The following quotes are extracts from the specific position of Master Shipfitter Position Description Sheets:

"I normally report to ———, Production Officer, Boston Naval Shipyard, a naval officer, from whom I receive only general supervision as on matters of policy and overall objectives in relation to safety, personnel, good housekeeping, broad trends in workload, and general performance of the Production Department with respect to timeliness, proficiency, quality, and economy. I receive no technical supervision. Generally, I am free to perform my duties according to my best and considered judgment, and I am required to accept this responsibility by taking the initiative for all work performed by Shops 11/26 personnel."

"the Production Officer occupies a billet of limited tenure as distinct from the position of Master Shipfitter, the occupancy of which is permanent in character and through which continuity of policy and practice is exercised."

"I am responsible for the executive direction, administrative control and technical competence of all components of the Structural Shop. I am responsible for administering coordinating, and directing the work of the Structural Shop which encompasses the Shipfitter Shop, Shop 11; and the Welding Shop, Shop 26, in a safe, timely, economical and productive manner."

The foregoing extracts would be typical of a portion of the general responsibilities listed in the Position Description Sheets of all of the previous fifteen (15) Shop Masters positions.

The responsibilities of these fifteen (15) Shop Masters varied considerably in number of employees in the respective shops, size of administrative force, size of Shop Planning force, size of Personnel force, number and types of trades supervised, dollar value of shop buildings and equipments, dollar value of shops operating budget; size, number, and geographical location of areas responsible for, etc.

The basic policy of the Navy Department, however, despite these differences was that all of the fifteen (15) Shop Masters Positions were organizationally equal to each other in all respects. They all reported directly to the Production Officer as Dept. Head. The Production Officer, in turn, was responsible to the Shipyard Commander. All (15) fifteen Shop Masters were thus in Organizational Level #3, all fifteen (15) received the same rate of pay, all fifteen (15) exercised the same *policy determining functions*, and general administrative functions, etc. There was not any civilian position in the Production Dept. that exercised any degree of line authority over any of the fifteen (15) Shop Masters Positions and each of the fifteen (15) was in the full and complete sense the Senior Civilian Supervisor of his respective shop or shops.

ORGANIZATION SUBSEQUENT TO SHOP GROUPING

ENCLOSURE 2

2. The Boston Naval Shipyard, Production Department, is now organized so that there are five (5) groups of shops and two independent shops that have not been grouped. Each of the five groups is headed by a former Shop Master that has been designated as a Group Master with full line authority over each and every shop within his respective Group in all areas of each shops operations. A typical Group is the Machinery Group composed of the former independent Shops 38, 41 and 56. Shop 38, Marine Machinists and formerly the full responsibility of the Master Machinist Marine; Shop 41, the Boilermakers Shop and formerly the full responsibility of the Master Boilermaker; and Shop 56, the Pipefitting Shop and formerly the full and only responsibility of the Master Pipefitter. The former Master Pipefitter, who previously only had authority over Shop 56, has been designated as Machinery Group Master and now has full and complete final responsibility and direct line authority in all areas of the operations of the formerly independent Shops 38 and 41. The Group Master has the line authority to approve, reject, modify or otherwise change any order given or action taken by the now subordinate and formerly equal Shops Masters of Shops 38 or 41 in any area of the shops operations. The now subordinate Shop Masters have been permitted to retain the title of their former position for pay purposes and enable the Navy Department to attempt to claim that their position has not changed; however, the new organization charts show that they are Head of Shop 38 and Head of Shop 41 respectively. The position of the Head of Shop is clearly shown as subordinate to the Group Master position in the revised line organizational charts. A fact peculiar to the Boston Naval Shipyard is that the Group Masters have been double billeted as Group Master and concurrently Head of their respective parent shop; in all other Naval Shipyards, the Group Master upon his designation as Group Master, was relieved of his former duties

in his parent shop and a new individual was designated as Head of his former shop, but subordinate to him. This peculiarity of double billeting in the Boston Naval Shipyard was possibly prompted by the fact *the* it was widely known in the activity that I was considering filing an appeal when Shop Grouping was implemented. Since documentary evidence establishes that the Group Master has full and direct line authority in all areas of the operations of each and every one of the shops within his group, it is also clearly evident that he is now the Senior Civilian Supervisor in each and every shop within his group and that the former Shop Masters now have been reduced to occupying a secondary and subordinate position.

The Production Department is now organized so that the line organization charts show that the Production Officer as Department Head reports to the Shipyard Commander, the Groups Masters report to the Production Officer and the Masters of the two still independent production shops that were not grouped report to the Production Officer (though the revised charts designate them as Head of their respective shops). The Masters of the formerly independent shops who were not designated as Group Masters now report to the Group Masters. It is clearly evident that the Group Masters have been retained in Organizational Level #3 and the former independent Shops Masters that were formerly in Organizational Level #3 have been reduced to Organizational Level #4. It is also clearly evident that the now subordinate Shop Masters now report to a lower level of supervision in their subordinate position of Head of Shop, and that they now report to individuals that they were formerly organizationally (as Navy Department policy) equal to in all respects.

The following listing is a partial enumeration of the, in my opinion, factual elements that substantiate, establish and relate to the fact that my misassignment of 1 Feb. 1961 from my previous position and title of Master Shipfitter, or Senior Civilian Supervisor in Charge of Shops 11/26, a grouping of two large and diversified shops, then known as the Structural Shop 11/26, the then highest Senior

Civilian Supervisor with full, complete and final line and policy determining authority for all areas and operations of the shop grouping then composed of Shops 11/26, the then largest and most diversified single unit in the Production Dept. under the complete supervision of a single autonomous Master position; to my present empty official title of Master Shipfitter and actual position and title of Head of Shops 11/26 by a formal written non-standard personnel action form personally initiated and issued by the Shipyard Commander to place in immediate affect the actual position change from my former to my present actual position, of lesser rank, status, authority, etc., constituted an adverse action to me, in violation of Sections 12 and 14 of the Veterans Preference Act, and that this violation of the Veterans' Preference Act was accomplished by the application of, previously well-planned, improper and/or illegal administrative procedures in additional violation of Civil Service Regulations and Naval Civilian Personnel Instructions.

I can, *have* and will further establish by documents and witnesses that the following actual changes have taken place in my former position of Master Shipfitter, despite the fact that I have been *permitted* to retain the pay and title of Master Shipfitter for pay purposes and to attempt to disguise the actual changes that have occurred since and by my designation as Head of Shops 11/26.

1. The Group Master, or Senior Civilian Supervisor in Charge of Shops 11/26, is now the *highest* Senior Civilian Supervisor, with full, complete and final authority over the formerly independent Structural Shops 11/26 group, by his lateral misassignment as Group Master.

2. The former Master Shipfitter position, by down-grading misassignment to Head of Shops 11/26, is now the *second* highest Senior Civilian Supervisor, with the limited authority, etc. that has been allowed to remain in the Head of Shops 11/26 position, over the areas and operations of Shops 11/26.

3. The misassignments to the Group Master and Head of Shop positions were placed in *permanent, immediate* and

full effect by formal written order of the Shipyard Commander 1 Feb. 1961.

4. The former position of Master Shipfitter *is not* shown on the revised Organizational Charts that were recently submitted to BuShips (Oct. or Nov. 1961). Only the positions of Group Master and Head of Shop are shown in the Shop Grouping Reorganization.

5. The use of a formal letter from the Shipyard Commander to effect the position changes, provided the Navy Dept. a greater opportunity to attempt to evade the administrative requirements of Civil Service Regulations, NCPI, and the *provisions, intent and purpose* of the Veterans' Preference Act, Sections 12 and 14, in their arbitrary selection of individuals to fill the respective positions at the time of implementation of Shop Grouping.

6. The stated, documented policy of the Navy Dept. was that the selection of an individual to fill the position and perform the duties of a Group Master position would not constitute a promotion for the individual so selected.

7. The Master Sheetmetal Worker, by his lateral misassignment to Group Master, has been retained in Organizational Level #3.

8. The former Master Shipfitter has been reduced to Organizational Level #4, from his former position in Organizational Level #3.

9. The Master Sheetmetal Worker, as Group Master, has retained his responsibility to report directly to the Production Officer, a Navy Captain, Department Head position in Organizational Level #2.

10. The former Master Shipfitter has been reduced to reporting directly to the Group Master position in Organizational Level #3, in lieu of the Production Officer in Organizational Level #2, that he formerly reported directly to.

11. The formerly independent shop grouping of Shops 11/26, then know as the Structural Shop 11/26, has been merged into the new Structural Group, under the *complete and direct* supervision of the new Group Master.

12. My position now reports to a lower level of super-

vision in the immediate area, the Group Master, and the occupant of this position, my current position reports directly to, was my organizational equal prior to the transfer of my grade-determinant functions to his position, by his misassignment as Group Master.

13. The down-grading misassignment to the actual title and position of Head of Shops 11/26 has had the result that I am now organizationally equal, in every respect, to individuals with the current ratings of Foreman and Chief Quartermen, who have been assigned to Head of Shop positions. The ratings of Foreman and Chief Quartermen were clearly subordinate to my former position of Master Shipfitter.

14. In some of our other Naval shipyards, the title and position of Master Shipfitter was rerated to the title and position of Group Master by a straight lateral reassignment, and both positions and/or titles perform exactly the same duties, etc., to exactly the same extent, and both positions are completely identical, in all respects, except for the change of title from Master Shipfitter to Group Master. Further, in other activities, other former Shop Masters than the former Master Shipfitter, have been laterally reassigned by rerating to Group Master of other groups, without any change in duties, etc.

15. The previous item (14) confirms the stated Navy Dept. policy that the designation to a Group Master position would not constitute a promotion for the individuals so designated. This must then confirm that a new level of supervision has not been interposed between the former Masters' position, that were not designated as Group Masters, and the Production Officer, but rather establishes that the Group Master positions have been retained in the same organizational and reporting levels, etc., by the lateral reassignment or misassignment. This further substantiates that the former Masters that were not designated as Group Masters have had their former organizational and reporting levels reduced by one level by down-grading misassignment.

16. My position is now subordinate in status, rank authority, etc., to numerous individuals in the immediate area

of the supervisory relationships, that are now occupying Group Master positions. The individuals that now occupy these positions were formerly my organizational equals; when I possessed the organizational and reporting levels, authority, etc., that was than equivalent to theirs; prior to my loss of such items by transfer of them to a Group Master position.

17. The following duties that were formerly the duties of the Master Shipfitter position in the Boston Naval Shipyard as stated in the Position Description Sheet NAVE-XOS 3473, requested by IOR Notice 12250 of 26 June 1957 and submitted in September 1957 (Exhibit hh, with Encl. 1, 2, 3, 4) have been transferred to the Structural Group Master position since the inception of BuShips Shop Grouping Reorganization in the Boston Naval Shipyard, effective 1 Feb. 1961, by direct, formal, written order of the Shipyard Commander.

(a) I, as Master Shipfitter, have had my position reduced one level in the Senior Supervisory Organizational levels of the activity. Specifically, I have been reduced to Organizational Level #4 from Organizational Level #3, and the Master Sheetmetal Worker, in his current mis-assignment as Structural Group Master, has been retained in Organizational Level #3.

(b) I, as Master Shipfitter, have had my reporting level of supervision reduced one level. Specifically, I formerly reported directly to the position of Production Officer, a Naval Captain's billet as Production Department Head in Organizational Level #2. I now report directly to position of Structural Group Master, a civilian position in Organizational Level #3. The Structural Group Master position is now occupied by the Master Sheetmetal Worker's position. The Master Sheetmetal Worker formerly did not have any authority or connection with any of the operations or areas of Shops 11/26. The Master Sheetmetal Worker, in his present capacity of Structural Group Master, now has full, complete and final line authority, to exactly to the same extent, formerly possessed by the Master Shipfitter position, over all operations and areas of Shops 11/26. As the civilian

supervisor with such complete, full and final authority over all other civilian positions within Shops 11/26, he is the Senior Civilian Supervisor, in full and complete final charge of Shops 11/26, and all other positions within Shops 11/26 are clearly subordinate, in all respects, to the Structural Group Master, as the Group Master now has the highest civilian authority that was formerly possessed by the Master Shipfitter position to approve, reject, modify, or otherwise change any action initiated in any area of the operations of Shops 11/26, by any of the subordinate supervisory positions within Shops 11/26, including those initiated by the formerly, at civilian level, autonomous position of Master Shipfitter.

(c) *The Group Master position now has had transferred to his position the full, complete and final authority for all of the following former functions, duties, responsibilities, etc., that were formerly in the position of Master Shipfitter. The Group Master position possesses, and exercises this full, complete and final authority, etc., over all areas and operations of Shops 11/26, to exactly the same extent that the Master Shipfitter position formerly possessed and exercised the exact same full, complete and final authority over all areas and operations of Shops 11/26, at the Civilian level. The actual transfer of the following specified functions have been fully and completely documented by exhibits previously submitted to the Commission and are a matter of record. If the Commission desires further documentation to further establish the actual transfer of the following functions, I will furnish them.*

(d) The formulating and establishing over all shop policy for Shops 11/26 composed of 1300 employees.

(e) The Administration of Shops 11/26.

(f) The operations of Shops 11/26.

(g) The organization of Shops 11/26.

(h) The facilities of Shops 11/26, \$10,421,00 Buildings and Equipment, 260,000 square feet of usable area.

(i) Preparation and submission of Shop Budget; \$1,500,000 yearly.

(j) Such other duties as the Group Master may assign (a ——— all).

- (k) Supervision of Shops 11/26 employees (1300).
- (l) Supervision of 13 different trades in 15 different ratings, performing diversified trade operations.
- (m) Supervision of Shop 11/26 employees over a wide geographical work area, several buildings, many ships, on a three-shift-a-day basis.
- (n) Supervision of experimental or non-standard work of Shops 11/26.
- (o) Coordinating the efforts of Shops 11/26 in relation to inter and intra-shop relationships, and all other areas.
- (p) Supervision of Shop Planning, Clerical and Personnel Sections of Shops 11/26, these are now staff to Group Master.
- (q) Policy meetings with the Production Officer and higher authority.
- (r) Ordered to attend lower grade meetings with the Repair Supt., formerly my Foreman's assignment.
- (s) Scheduling work operations of Shop 11/26.
- (t) Formulating Shops 11/26 Safety Policy.
- (u) Determination of "fitness of employees" physical and trade qualification for Shops 11/26.
- (v) Determination of manpower needs for Shops 11/26, by trades and numbers.
- (w) Determination of supervisory needs of Shops 11/26 by trades and numbers.
- (x) Selection of supervision for Shops 11/26 by trade and number.
- (y) Assignment of supervision for Shops 11/26 by trade and area.
- (z) Determination of training needs of Shops 11/26, types and amounts by trade.
- (aa) Performance of trade operations of all Shop 11/26 Supervision and artisans.
- (bb) Settlement of trade jurisdictional disputes with labor union officials, or other Shop Masters, relating to Shops 11/26 employees.
- (cc) Responsibility to determine the type and procedures of administrative controls to control and coordinate the production operations of Shops 11/26.

(dd) The determination of need, selection and assignment of Shop Planners in Shops 11/26.

(ee) The determination and establishment of Disciplinary Action policy in Shops 11/26.

(ff) The determination of policy in personnel matters; types of leave, safety, training, fund drives, bond drives, Beneficial suggestions, Incentive Awards, Conservation, etc., for Shops 11/26.

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(vv) Responsibility for full authority in the developing and implementation of programs for Civil Defense—Natural Disaster, Mobilization, etc.

(ww) The rerouting of orders, etc., from higher authority direct to the Group Master position. *This is in accordance with the official recognition of my now subordinate status, rank and authority.* These orders, etc., were routed directly to the former Master Shipfitter position, when the Master Shipfitter possessed the final authority, etc.

(xx) Prior to 1 Feb. 1961, as Master Shipfitter, with final authority over the grouping of shops then known as the Structural Shops 11/26, *I then performed all of the duties, etc., to exactly the same extent, that such duties etc., are now performed by a Group Master position.*

(yy) Authority to exercise my personal judgment, initiative, and originality in all areas of Shop 11/26 operations.

(zz) I do not now even possess the authority to authorize the installation of a drinking water bubbler in the upstairs Supervisors' room, used by the Leadingmen of Shops 11/26 for purposes of timekeeping and other work. This request that originated with the Leadingmen and that I now do not have the authority to approve, though I was in full agreement with the request, was disapproved recently, by Group Master's position. Prior to the transfer of my authority etc, this bubbler would have been installed by my authorization. The formerly autonomous position of Master Shipfitter, now as Head of Shops 11/26, does not even possess sufficient authority and responsibility to au-

thorize the granting of such a minor, simple and reasonable request.

(aaa) The Production Officer has set up a rotation policy of overtime for the now Group Masters. Specifically, they are to report in on an overtime basis and extra pay status, once or twice weekly for a period of 2 hours on the off shifts. They are to rotate weekend overtime assignments among themselves, during periods of weekend overtime work. As a result of this policy, the Group Masters, are now eligible to receive additional pay, in each weekly pay period, the equivalent of from 6 to 18 hours of additional pay, amounting to from \$36.00 to \$117.00 weekly. This is a loss of compensation to my position. If my rights as a preference eligible under sections 12 and 14 of the Veterans' Preference Act, Civil Service Regulations, and the NCPI, had been granted to me, I would have been eligible to receive this additional weekly compensation, since this policy was established.

(bbb) Capt. Brockett's letter to the 1st Service Regional director dated 23 Feb. 1961 in the last paragraph on page 2 defines the Shipyard's definition of the ultimate test of the elements forming the basis of rank, and states that these elements remain unchanged by my designation as Head of Shop.

I have previously stated and substantiated and Exhibit "gggg" now by official Navy documents conclusively proves my responsibilities have been *lessened*, my authority has been diminished, my grade determinant functions have been *transferred* to another position, my status is now *subordinate* to formerly equivalent positions, my rate of pay has remained the same, my seniority has remained the same as it would if I were performing apprentice duties again. The following items not substantiated by Exhibit "gggg" have also occurred, my *prestige* and *reputation* have been irreparably damaged.

Exhibit "gggg" will be conclusive to the Board that in every element of rank, as defined by the Navy Department, except pay, and seniority which cannot be changed, my position has been substantially reduced.

(18) The following items, in my opinion, will further illustrate and substantiate that I have been substantially reduced-in-rank and status, and further substantiate the extent to which this reduction-in-rank is actually and fully recognized by all levels of the Navy Dept. and this activity.

(a) Official Navy documents state that I will be **PERMITTED** to retain my title and pay. These documents do not state that I am **ENTITLED** to retain my title and pay. This clearly indicates that the Navy Dept. is aware that a reduction in my position has occurred.

(b) I have been involuntarily relocated, by direct order of the Group Master, to a much smaller and much plainer office, in my new position; than either the former office occupied by the former Master Shipfitter position, or the relocated office now occupied by the new Group Master position.

(c) The seating assignments at social functions sponsored by shipyard-connected private organizational groups, have been altered to reflect the new subordinate rank and status of the non-Group Master.

(d) Non-Group Master positions are now *not* invited to official functions, that in their former position of independent Shop Master, it was Navy Dept. policy to invite them to. Now, in recognition of the former Shop Masters subordinate status and rank, only the new Group Master positions are invited. This situation has also occurred relative to invitations from shipyard-connected private organizations.

(e) Shortly after their misassignment, as Group Masters, the Group Masters made arrangements to eat in an area separated from the area they had used for years. The formerly ate with all other former Shop Masters in the Master-Foreman quarters. They do not now dine in this area, and have left the company of the now subordinate non-Group Masters.

(f) The new Group Master positions, after years of membership in the Masters and Foreman's Association, have resigned from such membership in the Boston Naval Shipyard.

(g) Boston is the *only* Naval Shipyard that has the position of Foreman Welder report to the Group Master, thru

the Head of Shops 11/26 position. This is the *only* Naval Shipyard that has the position of Head of Shops 11/26. In other Naval Shipyards the position of Master Shipfitter, that was not reassigned as Group Master was misassigned as *only* the Head of Shop 11, and the Foreman Welder as the Head of Shop 26, and each reports directly to the Group Master. This is the *only* Naval Shipyard that has the Group Master double-billeted as concurrent Head of his parent or basic shop. The above features that are peculiar to the Boston Naval Shipyard, can possibly be accounted for by the fact that it was widely known in this activity that I was considering filing an appeal action. These peculiar features may be an attempt by this activity to minimize my appeal action, and a further extension of their efforts to disguise the actual differences between my former and present position.

(h) I was informed by the Production Officer that I was well qualified for and that I would undoubtedly be selected for the position of Group Master, the next time it came up, even though he and the Shipyard Commander would probably not be here, at that time.

(i) I have suffered extensive loss of status and prestige and my reputation has suffered irreparable damage, as a result of my actual position change.

(19) It has been documented by Navy documents, that the additional functions, duties, etc., that are now performed by the new Group Master position, were not intended to, and did not come from the Production Officer's position. The Navy documents establish that the functions transferred to the new Group Master position, came from the former independent Shop Masters positions.

(20) *Navy documents establish that the BuShips Grouping Reorganization is installed as a permanent change, and that the respective position changes of individuals to Group Master and Head of Shop positions, by reassignment and misassignment, are permanent, actual position changes.*

(21) The BuShips has initiated action (Sept./Oct. 1961) to belatedly ratify or legalize, a *previously accomplished personnel action*, by instructing the Naval shipyards to submit a new position description for the currently misassigned

Group Master positions. The BuShips has not, as would be logical, instructed the activities to concurrently prepare a new position description for the presently misassigned, Head of Shop positions. Possibly BuShips does not want position sheets for the two positions available for direct comparison, as such a comparison would readily illustrate the full extent of the actual differences between the two new positions, and further substantiate my appeal action. Possibly this is an Administrative procedure designed by BuShips to allow them to attempt to claim that the belated legalization of only the new title and position of Group Master would have the result of removing the Group Master position from my competitive level, thus BuShips would attempt to claim that I did not have any rights to the position, when my reduction-in-rank is finally confirmed.

(22) My appeal action is based on the conditions and policies in existence and in effect on the day my *previously accomplished actual position change was placed in full, complete and immediate effect, by formal written order of the Shipyard Commander 1 Feb. 1961. Any subsequent appeal will also be on this basis.*

(23) Court decisions have established that the policies of an agency that are in effect, at the time an action is placed in effect, are binding on the agency. Accordingly, the NCPI's that were in effect on 1 Feb. 1961, *and not the many changes that have been initiated since the filing of my appeal*, will be binding in this appeal. Reference, United States Reports, Watson vs. U.S., Volume 355, Page 14. Service vs. Dulles, Volume 354, Page 363. Accardi vs. Shaughnessy, Volume 347, Page 260.

(24) Court decisions have established that Preference eligibles that occupy positions that are not covered by the Classification Act, are entitled to the same protection that Preference Eligibles that occupy positions that are covered by the Classification Act, are entitled too, under the *provisions, intent, and purpose* of the Veterans' Preference Act. (District Court of the United States, Civil Action 7076, "Wettre vs. Hague" Opinion, 14 Oct. 1947.)

(25) Navy documents state that a position of an employee consists *officially* of what higher authority *claims* is assigned

to it, it *actually* consists of the duties and responsibilities discharged by the employee. Should the *actual* duties and responsibilities differ from those *officially* prescribed for the position, higher authority should initiate appropriate action to eliminate the difference. *Failure to do so constitutes a misassignment and misassignments are contrary to law and Civil Service Commission Regulations.* The foregoing is an apt summation of what has happened to my former position, in that it is Officially Claimed that my duties are the same to attempt to disguise the fact that my actual duties have drastically reduced, and that no action has been initiated to correct this condition, except my appeal action.

(26) The Navy Dept. states that when an employee allows his position to erode or deteriorate to a point where down-grading becomes necessary, such employee is not then protected by Retention Preference Regulations. My appeal action is notice that I have not allowed my position to erode; my position has been eroded over and despite, my continued, urgent, detailed, substantiated, established, documented, ineffectual, and ignored protests to the Commission.

(27) It is fully recognized that BuShips and the activities have the authority to implement any program that they deem to be in the best interests of the Navy Department; however, it is also recognized that, concurrent with such authority they also must exercise the responsibility to insure that such programs are implemented in accordance with law, *Civil Service Regulations*, and their own "Rules of the Road", the Naval Civilian Personnel Instructions. *This implementation could have been properly accomplished by the use of Standard Personnel Procedures, but for reasons known only to the Navy Department, this was not done. The Navy Department, instead, after devoting intensive study and effort for a period of over three years, at a very high management level (the Bureau level) decided that it was best implemented by the adoption of, in my opinion, a series of illegal and/or improper administrative actions. Since this course of action was decided after intensive and prolonged high level planning, I believe it is a reasonable assumption that the decision to implement*

the Program by this series of illegal and/or improper procedures must have been both deliberate and premeditated. The present method of implementation has, in my opinion, allowed the Navy Department to circumvent the requirements of the Veterans' Preference Act, the Reduction-in-Force Regulations, and their own Naval Civilian Personnel Instructions. This evasion of these laws, etc., have given the Navy Department a much greater degree of latitude in placing the specific individuals they want in these positions.

(28) NCPI 352.4-2 reads, in part; "As used in (3) above 'Reorganization', means the *planned*, elimination, addition, or *redistribution* of functions and duties within an organization. Thus, the *reduction-in-force system* will govern any adverse action brought about by *deliberate* management action to change official duties previously assigned, where the reasons are impersonal to the effected employee. *This applies to unpublicized changes made by a supervisor affecting one or more positions under his control*, as well as changes resulting from formal reorganization orders affecting complete organizations". The reduction-in-force system was not applied to my actual position change.

(29) The following quotation is from the Navy Dept. publication, "Position Classification Handbook." This handbook in part states: "The ranking method—value of importance is determined by difficulty and responsibility of work—This system has logic and simplicity. It is interesting to note that in some sense, ranking must be used in all systems". My actual position change, by eliminating areas of authority formerly vested in my position as Master Shipfitter in full charge of Shops 11/26, has exercised adverse effect on my rank.

(30) The provisions, intent and purpose of Section 12 of the Veterans' Preference Act, the provisions of the following NCPI's, in accordance with the policy established by the Department of Defense, (NCPI 351.9-4b) (351.9-4c-1) (351.9-4d-1) provides that: When the functions of a position are transferred to another position, an offer to follow the functions must be extended to all Retention Group I, II & III employees identified with the transferred functions. When my position was actually changed on 1 Feb. 1961, this was not done. I contend that this was an

adverse action and in violation of Section 12 of the Veterans' Preference Act, etc.

(31) The Veterans' Preference Act, Section 14 stated that a veteran shall not be reduced-in-rank. It does not state that a loss in pay or compensation is a prerequisite to a reduction-in-rank. It does not state that the use of any special or informal means can be used to effect a reduction-in-rank, to attempt to successfully nullify the Act. It only states unequivocally that a veteran shall not be reduced in rank. It is my contention that my actual position change, with all of the attendant enumerated losses that have been previously documented to the Commission, has resulted in my being reduced-in-rank. I have documented the drastic losses from my former position in all areas that could conceivably affect rank, except pay and seniority.

The Regional decision states that the Commission has previously issued decisions that particular position changes constituted reductions in rank where there was no loss of grade or salary involved, in such cases the Commission has found that there was a functional and substantial lessening of the "rank" of the position to which changed with relation to other positions in the immediate area of the supervisory relationship. I have previously substantiated and Exhibit "gggg" conclusively established that I have, by designation as Head of Shop, suffered a functional and substantial lessening of "rank" in relation to many other supervisory positions in the immediate area, in that I am now subordinate to numerous individuals illegally mis-assigned to perform the duties of Group Master and I was prior to my designation as Head of Shop, at least their equal in rank in every respect, and further was at that time performing all of the duties now performed by a Group Master Position.

It is my contention that I have been the victim of an adverse action that has resulted in my reduction-in-rank in violation of the *provisions, intent and purpose* of the Veterans' Preference Act, Section 14.

The following is a listing of some of the areas in which the Navy Dept. has, in my opinion, acted illegally and/or improperly in its current method of implementing the Bu-

Ships Shop Grouping Reorganization Programs, in concurrent violation of the Veterans' Preference Act, and in additional violation of *Civil Service Regulations*, and the NCPL.

a. Position changes initiated due to planned reorganization must be in accordance with R.I.F. procedures, NCPI 351.2-3; 2-5e; 2-5q; 4-2b; 9-4bc; and NCPI 352.4-1; 4-2a c, e; 4-4a, b; 5-6a, b.

b. New IVa Supervisory rating cannot be properly established unless the requirements of NCPI 310.2-2, 310.2-2b, 531.3-3a, 531.3-4a, b, c, d, n, j; 531-36, and 531, Enclosure 21, are complied with, and this has not been done to date.

c. The entire program to date, 12/21/61, has been implemented by extensive and long time use (over two years) of Misassignments, and Misassignments are contrary to law, *Civil Service Regulations* and Naval Civilian Personnel Instruction 512-7.

d. Proper and required standard personnel action forms have not been issued to affected individuals to reflect the new duties and status. Under the present conditions, the *officially claimed* and *actually performed* duties and status of the positions are vastly different.

e. The actions are not consistent with the policy of Naval Civilian Personnel Instruction 211.2-1, 211.3-1, 3-2.

f. Despite the wide extent and frequency of these violations; despite the responsible agencies long time previous knowledge of these violations; the agencies that are charged with the responsibility to correct such conditions, to my knowledge, have not done so, since they still exist, and neither have they, to my knowledge, initiated any action relative to the immediate or future correction of these violations. The responsible agencies are apparently ignoring their duty and responsibility to properly exercise their authority and correct these violations. The only attempted corrective action, to date, to my knowledge, is the appeal actions of several individuals to the Commission.

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

January 27, 1962.

To: John W. Macy Jr., Chairman,
U. S. Civil Service Commissioners,
Washington, D. C.

From: Francis J. Dugan,
347 Dutton Road,
Sudbury, Massachusetts.

Subj: Appeal of Board of Appeal and Review Decision,
dated 27 Oct. 1961, re Francis J. Dugan,—Reduction-
in-rank, Sections 12 and 14 of Veterans' Preference
Act of 1944. File BAR:IS:sbj.

Dear Sir:

Since the effect and nature of this adverse action is continuing, I am submitting the following important information to you while the investigation is still in process so as to enable you to complete your findings on the additional available evidence as it develops during your investigation.

I am submitting the following information to further substantiate by Navy documents that 1.) I have been adversely effected by being reduced-in-rank. 2.) This reduction-in-rank has been accomplished by the lowering of the organizational and reporting levels of my former position and the concurrent transfer of my grade determinant and other functions, authority, duties etc., to the position of Master Mechanic (Structural Group), by my misassignment, on 1 Feb. 1961, from the position of Master Shipfitter to my present actual position of Head of Shops 11/26, by the direct, written, formal order of the Shipyard Commander.

I have previously substantiated by Navy documents that 1.) The functions, etc. that have been transferred to the Group Master position were derived from, and only from, the former independent Shop Master positions that are now subordinate to the respective Group Masters, within the respective groupings. 2.) The Group Master positions, possess exactly the same authority, duties, etc., to exactly the same extent that the former independent Shop Masters positions possessed these duties, etc., in relation to all areas

and operations of the shops formerly under the full, final and complete authority of the former independent Shop Masters. 3.) The Production Officer position has retained all of the functions, duties etc. that he performed prior to Shop Grouping and still exercises the same functions of review etc. of the actions of the Group Master position to the same degree and relationship that he exercised these functions to the former independent Shop Master positions. 4.) As Master Shipfitter in full complete, and final charge, with the policy determining authority, of the grouping of Shops 11/26, then known as the Structural Shop 11/26, I performed all of the duties etc. now performed by a Group Master position (See "Exhibit gggg" under "Title").

A direct comparison of "Exhibit jjjj", Enclosure 1 of this letter, with "Exhibit hh" previously submitted will readily determine that the Master Shipfitter position had the full, complete, and final policy determining authority for all operations and areas of the two largest and most diversified shops (the former grouping of Shops 11/26 known as the Structural Shop) of the three shops now comprising the Structural Group. The addition of a few arithmetical computations will establish that the former Master Shipfitter position had this responsibility for the following percentages of employees, equipment, productive work, etc. of the new Structural Group:

a) The former Structural Shop Grouping, Shops 11/26 contains 72% of the total number of employees, in the new Structural Group.

b) The former Structural Shop Grouping contains 75% of the total IVa Supervisory employees in the new Structural Group.

c) The former Structural Shop Grouping contains 72% of the total non-supervisory Group II and III employees in the new Structural Group.

d) The former Structural Shop Grouping contains 80% of the major trade areas in the new Structural Group.

e) The former Structural Shop Grouping contains 80% of the varied, as to grade and trade designation, IVa Supervisory Rating Titles in the new Structural Group.

f) The former Structural Shop Grouping contains 70% of the many and varied as to trade and grade, Group II and III Mechanical Ratings, in the new Structural Group.

g) The former Structural Shop Grouping was responsible for 83% of the buildings, equipment, etc., now contained in the new Structural Group.

h) The former Structural Shop Grouping contained 75% of the areas of floor space now contained in the new structural Group.

i) The former Structural Shop Grouping was responsible for 95% of the Experimental, Unusual, or Non-Standard Work now performed by the new Structural Group.

j) The former Structural Shop Grouping was responsible for 75% of the Shop Planning Administrative and Personnel functions now in the new Structural Group.

k) For illustration and emphasis the following is a summation of the previous items (a) through (j) and the percentages of each item contained in the former Structural Shop Grouping, as a percentage of the new Structural Group:

a) Total Employees	72%
b) Total Supervisory Employees	75%
c) Total Non-Supervisory Employees	72%
d) Total Major Trade Areas	80%
e) Total Supervisory IVa Ratings	80%
f) Total Non-Supervisory Group II and III Ratings	70%
g) Total Buildings, Equipment and Material	83%
h) Total Floor Space	75%
i) Experimental, etc. Work	95%
j) Shop Planning etc.	75%
<hr/>	
Total of percentages	777
Average of percentages	77.7%

I have previously established that the Group Master position now has the full, complete, final, and policy determining authority over all operations and areas of the former Structural Shop Grouping that was formerly in the Master

Shipfitter position. The foregoing Item k. substantiates that an average of more than 75% of the duties, etc. that are in the new Group Master position were the former responsibility of the Master Shipfitter.

The following comments apply to the enclosed Position Description of Group Master:

- 1) Section 1—Job Title—No comment.
- 2) Section 2—Location—No comment.
- 3) Section 3—Purpose—

This section substantiates that I am now completely subordinate to the Group Master position, and that the formerly independent Structural Shop Grouping of Shops 11/26, is now completely under the direct, full, final, and complete supervision of the Group Master, as segments of the new Structural Group.

- 4) Section 4—Responsibility and Authority—

Examination by the Commissioners of "Exhibit hh" will readily determine that each and every function, etc. listed under this section, is contained in and was the full, final, and complete responsibility of the Master Shipfitter position, relative to the operations of Shop 1126, and that these duties etc. have been transferred to the new Group Master position and now account for more than 75% of his responsibility in relation to this section, as Group Master.

- 5) Section 5—Experimental, etc. Work—

Examination will determine that 95% of the Group Master responsibility under this section was derived from operations performed by the formerly independent Structural Shop Grouping 11/26, and this responsibility was transferred from the former Master Shipfitter to the Group Master position.

- 6) Section 6—Physical Plant—

Examination will determine that the great majority of the multi-storied structures, other building and areas were

the the former responsibility of the Master Shipfitter position. Approximately 300,000 square feet or 75% of the total is used for the operations of the former Structural Shop Grouping 11/26 and was the responsibility of the Master Shipfitter. The great majority of the extremely costly, the great majority of the extremely diversified, the great majority of the intricate equipment and material; is that used by the employees of the formerly independent Structural Shop Grouping 11/26 and was the former responsibility of the former Master Shipfitter position. Examination will disclose that the dollar value of the Physical Plant under the former control of the former Master Shipfitter position and used by the formerly independent Structural Shop Group 11/26 was estimated at \$5,069,200, or more than 83% of the total dollar value of the Physical Plant in the entire new Structural Group. The full, final, and complete responsibility etc. for all these have been transferred to the Group Master position.

7) Section 7—Major Problems and Difficulties—

Examination will show that all of the functions etc. listed in this Section were the former responsibility of the former Master Shipfitter position, relative to the operations of the formerly independent Structural Shop Group 11/26, and that more than 75% of the duties of the now Group Master as listed under this section are derived from the operations of the formerly independent Structural Shop Group 11/26 that was the former responsibility etc. of the Master Shipfitter position and have now been transferred to the Group Master position, in the new Structural Group. Due to the large number of diversified trades, areas, types of production operations, new developments in metals used, etc., the great majority of the fluctuations, required adjustments, etc. are those required in the operations performed by and the former responsibility of the formerly independent Structural Shop Group 11/26. The great majority of the Sheetmetal Workers operations are concerned with the manufacture and installation of ventilation, metal furniture and miscellaneous light structure on naval ships. These operations are obviously highly repetitious and

relatively standardized, and thus do not create major problems.

8) Section 8—Related Considerations—

The statements in the two paragraphs under this Section appear to me to be entirely illogical and irrational.

The former Master Sheetmetal Worker, and now Group Master had no connection with, no responsibility for, and no direct familiarity with the operations of any of the many and diversified trades of the former Structural Shop Group 11/26. Suddenly, by his mere misassignment as Group Master he is magically endowed with the complete trade knowledge of 15 different trade ratings in the Mechanical Group; and is now the final authority for all technical aspects of the operations of these trade ratings. When it is considered that many of these trades require a four year apprenticeship of intensive study and application on-the-job to obtain a basic familiarity with the respective trades operations, this sudden acquisition of this extensive knowledge is even more difficult to explain or understand. The former Master Shipfitters' position and the formerly independent Structural Shop Group 11/26 contained 72% of the total employees, 75% of the total IVa Supervisory employees, and 80% of the major trade areas, now in the new Structural Group. Thus the Group Master position, by transfer from the former position of Master Shipfitter, now has the full, complete, and final authority, etc. that the Master Shipfitter formerly possessed relative to the operations of the former Structural Shop Group 11/26, and these former responsibilities account for 75% of the functions etc. of the now Group Master position, and this 75% that is relative to 11/26 operations, the present Group Master, prior to 1 Feb. 1961, did not have any connection with, responsibility for, or direct familiarity with, and it is obviously ridiculous to claim that he is now possessed of sufficient trade knowledge, relative to the operations of Shops 11/26, to be the final technical authority for all operations of Shops 11/26.

9) Section 9—Structural Group Staffing—Previously commented on.

Enclosure 1 to this letter, has been approved by the Production Officer and the Shipyard Commander as an accurate description of the position of Master Mechanic (Structural Group) in the Boston Naval Shipyard. I believe that this document will further substantiate the extent to which the full, complete, final, and policy determining authority, responsibility, etc., that was formerly in the former position of Master Shipfitter has been either transferred to the Group Master position, and/or drastically reduced, in my present actual position of Head of Shops 11/26.

The Board of Appeal and Review decision dated 29 Oct. 1961 on Page 3 paragraph 1, states that supervision over certain administrative and support functions constituted a minor part of my duties and that the loss of these areas, did not effect my rank. The cost in gross wages alone to the personnel required to perform the operations in these areas was approximately \$165,000 per year, the expenditure of such a large sum on wages would not be justified for items of a minor nature.

Sincerely,

FRANCIS J. DUGAN,
347 Dutton Road,
Sudbury, Massachusetts.

Enclosure.

I. Exhibit "jjjjj" position Description—Structural Group Master—Boston Naval Shipyard.

EXHIBIT "JJJJ"

Job Title: *Master Mechanic (Structural Group)*

Location: Production Department, Boston Naval Shipyard

Purpose: *To direct and coordinate, through subordinate shop heads, the Production Department functions assigned to the Structural Group which includes the Shipfitting Shop (11), Sheetmetal Shop (17), and the Welding Shop (26) in the repair, overhaul, conversion and construction of naval vessels and equipments.*

Responsibility and Authority:

1. *Reports to the Production Officer, Captain, USN. Incumbent is delegated full authority to manage the diverse and changing work operations performed by the group of shops under his control. Problems of top management concern are referred to him, from both directions, for analysis and resolution. The Production Officer does not normally concern himself with the intimate details of operations. Indices, which portray the effectiveness of Structural Group operations are available. The incumbent's judgment, executive ability, and trade knowledges are relied on by the Production Officer in the management of Structural Group operations. This relationship is built on mutual respect and support as would be expected of top management personnel.*

2. *Has top responsibility for the development and maintenance of a skilled, competent, fully rounded, and versatile work force within the Structural Group. Directs the establishment of effective work methods, arranging of tools and facilities, determination of present, anticipated, and long range workloads.*

3. *Work is received in the form of job orders which specify the scope of the work. Master production schedules prescribe completion dates for each job order. Directs adherence to schedules and oversees completed work in terms of time, costs and effectiveness.*

4. *Has continuing daily personal contacts with Structural Group Shop Heads and top management shipyard officials including, from time to time, the Shipyard Commander.*

Also, has frequent contacts with Bureau representatives and executives of private firms regarding *Structural Group Management* and operations. *Is authorized to speak, take action, and commit the Structural Group in matters under his cognizance.*

Experimental, Unusual or Other Non-Standard Work:

1. Experimental, unusual or other non-standard work, not normally a requirement of the Structural Group is performed by the staff of the shops within the Group. Plating room problems arise constantly and require frequent checks to insure correct blending of electrical and chemical forces to attain proper balance. Effective tests and methods must be devised to curtail production costs and to meet commitment dates.

Improvements in armament, hull design, missile systems and other advances in shipbuilding equipment and materials *impose shipfitting and welding problems* where require experiments to attain quality standards at minimum cost.

Physical Plant:

1. The physical plant of the Structural Group includes several multi-storied structures, other buildings and areas distributed throughout the Shipyard and South Boston Annex. These buildings and areas, approximate 400,000 square feet, house extremely diversified, extremely costly and intricate equipment and material used by the work force of the Structural Group Shops. The dollar value of the physical plant (buildings, equipment, and materials) approximate 6 million dollars.

Major Problems and Difficulties:

1. Continual, irregular, and abrupt fluctuations in the nature, volume and diversity of work are common during major repairs, overhauls, conversions, and construction projects. These fluctuations, demanding prompt, unusual, and effective adjustments, are caused by differences in ship types, ship availabilities, major changes in plans and

specifications, changes in requirements of other Shipyard components, equipments and materials, and unavoidable fluctuations in total yard workload.

2. The above situations, and others, alter work priorities, require increasing or decreasing staffing on multi-shift operations, working without plans or blueprints on rush jobs. They also require abrupt changes in work areas, balancing the work among the shops within the Structural Group, and impose demanding and unprecedented coordinating action with those of other Production Shop Groups, other major shipyard components, and other activities to minimize delays and interferences and curtail costs. Varied and scattered work locations aboard ship, on the waterfronts, in the Shipyard Annex, and in shop areas, *impose production and coordinating problems* which must be promptly and effectively resolved.

Related Considerations:

1. Applies a *detailed knowledge* of total shipyard work operations and *shop practices*. He has *full accountability* for, and is *recognized* as, the *final authority* on operations performed by the Structural Group.

2. *Directs* a work force of 1712 production workers and supervisors in 14 major trade areas.

STRUCTURAL GROUP STAFFING (11-25-61)

Shipfitter Shop (11)

Non-Supervisory	App. Shipfitter	17
	Calker and Chipper (Iron)	110
	Driller	92
	Helper Flange Turner	2
	Helper Shipfitter	30
	High Lift Truck Operator	2
	Loftsman	42
	Machine Operator	2
	Prod. Dispatcher	7
	Puncher & Shearer	44
	Riveter	2
	Shipfitter	366
	Shop Planner (Shipfitter)	9
	Total Non-Supervisory	690
Supervisory	* Master Shipfitter	1
	Foreman Shipfitter	1
	Ch. Qrt. Shipfitter	2
	Qrt. Calker and Chipper (Iron)	1
	Qrt. Driller	1
	Qrt. Shipfitter	8
	Ldg. Calker and Chipper (Iron)	7
	Ldg. Driller	6
Total Supervisory		55
Total Shop		745

* Dual Billeted (Shop 26)

Sheetmetal Shop (17)

Non-Supervisory	App. Sheetmetal Worker	13
	Buffer and Polisher	5
	Electroplater	4
	Helper Sheetmetal Worker	54
	Sheetmetal Worker	338
	Sheetmetal Worker (Limited)	26
	Shop Planner (SMW)	5
	Prod. Dispatcher	6
Total Non-Supervisory		451
Supervisory	* Master Sheetmetal Worker	1
	Chq. Sheetmetal Worker	1
	Qrt. Sheetmetal Worker	6
	Ldg. Buffer and Polisher	1
	Ldg. Sheetmetal Worker	22
Total Supervisory		31
Total Shop		482

* Structural Group Master

NOTE: Foreman Sheetmetal Worker, authorized for use on 19 Sept. 1961, is presently in process of being filled.

Welding Shop (26)

Non-Supervisory	App. Welder	12
	Flame Cutter	71
	Shop Planner (Welder)	6
	Welder	358
	Welder (Electric)	1

Total Non-Supervisory 448

Supervisory	* Master Shipfitter	
	Foreman Welder	1
	Qrt. Flame Cutter	1
	Qrt. Welder	5
	Ldg. Flame Cutter	6
	Ldg. Welder	24

Total Supervisory 37

Total Shop 485

* Dual Billet (Shop 11)

Structural Group Staffing Summary

Shop	Non-Supervisory	Supervisory	Total
11	690	55	745
17	451	31	482
26	448	37	485
Total	1589	123	1712

BAR:IS:plb
T. D. February 14, 1962.

February 16, 1962.

Mr. Francis J. Dugan,
347 Dutton Road,
Sudbury, Massachusetts.

Dear Mr. Dugan:

This refers to your letter of December 26, 1961, which requested that the Commission reopen and reconsider the decision of the Board of Appeals and Review, issued October 27, 1961, which held that your appeal from an order of the Commander, Boston Naval Shipyard, dated February 1, 1961, is not within the purview of Section 14 of the Veterans' Preference Act of 1944 and that the Civil Service Commission does not, therefore, have jurisdiction to adjudicate the appeal.

The Civil Service Commissioners have given very careful consideration to the representations in your letter of December 26, 1961, and its attachments, and to the additional representations made in your letter of January 27, 1962. As a result of their consideration of the matter, the Commissioners find that the current representations fail to demonstrate probable error in the previous decision of the Board of Appeals and Review. Accordingly, the request for reopening your appeal is denied, and the Board's decision of October 27, 1961, remains as the final Commission decision in the matter.

By direction of the Commission:

Sincerely yours,

M.V.W. 2/15/62.
MARY V. WENZEL,

Executive Assistant to the Commissioners.

BAR:ISigmond:plb 2-14-62

Filed May 14, 1963

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil Action No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

v.

FRED KORTH, ET AL., *Defendants*.

STATEMENT OF MATERIAL UNDISPUTED FACTS PURSUANT TO
LOCAL RULE 9(h)

Defendants contend that the material facts involved herein are set forth in the certified copy of the administrative record concerning plaintiff which is attached hereto. For purposes of the motion for summary judgment, defendants summarize said facts as follows:

1. In 1960 the Bureau of Ships announced a reorganization for the Naval Shipyards designed to reduce overhead costs by grouping shops in the production department.

2. As a result of this reorganization the Boston Naval Shipyard set up 5 major groups of shops, each of which was headed by a Group Master.

3. Prior to February 1, 1961 plaintiff was a Master Shipfitter in the Boston Naval Shipyard, serving as the ranking civilian official in shops 11 and 26.

4. By letter of February 1, 1961 the Boston shipyard commander advised plaintiff as follows:

"By my letter to you of 30 November 1960 you were advised of the grouping of Shops 11/26 and 17 and of Mr. Simon's selection as Group Master, and that you were to continue to direct the affairs of your shop as heretofore, pending my approval of an organization plan for the shop group.

The organizational plan for your shop group has been submitted and generally approved. Accordingly, as

of this date Mr. Simon have been given full authority to implement the plan as approved, and has been assigned full responsibility for over-all policy, administration and operation of all shops included in his group.

As head of Shops 11/26, you will report directly to and will be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops, and for such other additional duties as he may assign in connection with the over-all shop grouping plan. In my considered opinion shop grouping offers many opportunities for improving our operations and enhancing the effectiveness of the support which we furnish the Fleet. I am sure that I can count on you to continue to give the plan and Mr. Simon your wholehearted and unfailing support and cooperation."

5. From February 1, 1961 to the present time plaintiff has continued to be a Master Shipfitter in the Boston Naval Shipyard, serving as the ranking civilian official in shops 11 and 26.

6. On February 6, 1961 plaintiff appealed to the First Civil Service Region, alleging that the action incident to the grouping of shops 11, 26 and 17 constituted a reduction in rank for him in that he had in effect moved down one level in the Senior Supervisory level. His contention was based on the fact that whereas prior to February 1, 1961 he reported directly to the Production Officer, subsequent thereto he reported to a Group Master who in turn reported to the Production Officer.

7. The First United States Civil Service Region established that plaintiff was a preference eligible within the meaning of the Veterans Preference Act, and assumed jurisdiction of his appeal for the sole purpose of ascertaining whether the Shipyard effected a reduction in rank within the purview of the Veterans' Preference Act and Civil Service regulations, Part 22.

8. In a decision dated May 3, 1961 the First United States Civil Service Region reviewed the evidence in detail and

determined that plaintiff's appeal was not within the purview of Section 14 of the Veterans Preference Act because no adverse personnel action had been effected by the Shipyard with respect to plaintiff.

9. Plaintiff appealed to the Civil Service Commission's Board of Appeals and Review which by letter of October 27, 1961 to plaintiff advised him that his appeal from the order of the Commander, Boston Naval Shipyard, dated February 1, 1961, was not within the purview of Section 14 of the Veterans Preference Act and that the Civil Service Commission did not have jurisdiction to adjudicate it. In so ruling the Board determined that the mere change in organizational structure did not reduce plaintiff's rank as Master Shipfitter and ranking civilian supervisor in shops 11 and 26. With respect to plaintiff's contention that some of his former duties and responsibilities had been assigned to the Group Master, the Board said:

"So far as the record shows, your contention is valid only with respect to supervision of certain administrative and support services which were formerly maintained in each shop but which have since been consolidated for the shop group under supervision of the Group Master. In the opinion of the Board, supervision over such administrative and support services constituted a minor part of your duties and responsibilities and did not have any significant effect upon the rank of the position of Master Shipfitter. . . .

"As has been indicated above, the Board does not consider that the changes in organization and in the assignment of duties and responsibilities as they have affected your position as Master Shipfitter evidence any reduction in your rank. The Board cannot, of course, adjudicate the present matter on the basis of speculation as to the ultimate outcome of the reorganization. In the event that your rank or compensation is reduced by some future administrative action of your employing agency, you will then be entitled to exercise of a right of appeal to the Commission under Section 14 of the Veterans Preference Act of 1944."

10. Plaintiff requested the Civil Service Commissioners to review his case, and was advised by letter of February 16, 1962 that his request for reopening his appeal was denied and the Board's decision of October 27, 1961 remained as the final Commission decision in the matter.

11. Plaintiff instituted this action in November, 1962.

/s/ DAVID C. ACHESON,
United States Attorney,

/s/ CHARLES T. DUNCAN,
Principal Assistant United States Attorney,

/s/ JOSEPH M. HANNON,
Assistant United States Attorney,

/s/ ELLEN LEE PARK,
Assistant United States Attorney.

Filed May 14, 1963

GOVERNMENT'S EXHIBIT No. 1-A

I, Mary V. Wenzel, Executive Assistant to the Commissioners, United States Civil Service Commission, certify that the document attached hereto relates to the appeal of Francis J. Dugan, filed with the Commission under Section 14 of the Veterans' Preference Act of 1944, as amended, and is a true copy of an official document under my custody and control.

/s/ MARY V. WENZEL,
Executive Assistant to the Commissioners.

Washington, D. C., May 9, 1963.

Copy

UNITED STATES CIVIL SERVICE COMMISSION
Washington 25, D.C.

BAR:IS:sbj

October 27, 1961.

Mr. Francis J. Dugan,
Building 104, Structural Shop 11/26,
Boston Naval Shipyard,
Boston, Massachusetts.

Dear Mr. Dugan:

This refers to your further appeal from the decision of the Director, First U. S. Civil Service Region, issued on May 3, 1961, holding that your appeal from an order of the Commander, Boston Naval Shipyard, dated February 1, 1961, was not within the purview of Section 14 of the Veterans' Preference Act of 1944.

The Board of Appeals and Review has fully considered the entire appellate record in the case, including all representations made by you and all representations made on behalf of the employing agency.

You contend that the order of the Shipyard Commander, which instructed you, as head of Shops 11/26, to report directly to and to be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops and for such other additional duties as Mr. Simon, as Group Master, might assign to you in connection with the over-all shop grouping plan, was an adverse decision which reduced you in rank within the meaning of Section 14 of the Veterans' Preference Act. In support of that contention, you state that you are no longer directly responsible to the Shipyard Production Officer but report to him through Mr. Simon and that some of your former duties and responsibilities have been assigned to Mr. Simon as Group Master. You have also made numerous representations with respect to the Bureau of Ships program for the grouping of Production Department shops in each naval shipyard, with re-

spect to the implementation of the shop-grouping program at the Boston Naval Shipyard, and with respect to your own personal experiences in connection with that implementation. While some of these representations are clearly intended to support your contention that you have been reduced in rank, many of them relate to other matters, such as the legality of the reorganization, the establishment and classification of Group IVa positions, the routing and distribution of shipyard communications, the consideration given your recommendations by the Group Master, etc. Such other matters are within the administrative jurisdiction of the Navy Department rather than of the Civil Service Commission, and questions concerning them which you may wish to have resolved by competent administrative authority should be submitted to appropriate officials of the Navy Department through the employee grievance procedures which the Navy Department has established for that purpose. The Board's consideration of your current appeal must necessarily be limited to the one question within the Commission's appellate jurisdiction; that is, whether the Shipyard Commander's order to you on February 1, 1961, reduced you in rank within the meaning of Section 14 of the Veterans' Preference Act of 1944.

The record shows that prior to the order of February 1, 1961, you held the official rating of Master Shipfitter and that as Master Shipfitter you were the civilian supervisor with highest rank in Shops 11 and 26. The record also shows that following the order of February 1, 1961, you continued to hold the official rating of Master Shipfitter and that as Master Shipfitter you continued to be the civilian supervisor with highest rank in Shops 11 and 26. It is true that the order of February 1, 1961, interposed a new level of supervision between you and your former immediate supervisor, the Production Officer; specifically, it provided a new civilian supervisory level of Group Master over the grouping of Shops 11, 17, and 26; however, the addition of this new level of supervision in the organizational structure of the Production Department did not affect your rank as the highest civilian supervisor in Shops 11 and 26. Accordingly, the Board considers that the mere change in

organizational structure directed by the Shipyard Commander's order of February 1, 1961, did not reduce your rank as Master Shipfitter and ranking civilian supervisor in Shops 11 and 26.

The Board has given very careful consideration to your contention that some of your former duties and responsibilities have been assigned to Mr. Simon as Group Master. So far as the record shows, your contention is valid only with respect to supervision of certain administrative and support services which were formerly maintained in each shop but which have since been consolidated for the shop group under supervision of the Group Master. In the opinion of the Board, supervision over such administrative and support services constituted a minor part of your duties and responsibilities and did not have any significant effect upon the rank of the position of Master Shipfitter. Therefore, the Board does not consider that the loss of those duties and responsibilities indicates that you have been reduced in rank within the meaning of Section 14 of the Veterans' Preference Act.

The Board notes that the Navy Department has administrative authority and responsibility for its internal organization and for assigning duties and responsibilities to its civilian employees. It is evident that, as you claim, the reorganization of the Production Departments in Naval Shipyards to introduce shop grouping is not yet fully implemented. In fact, so far as the appellate record shows, the position of Group Master over Shops 11, 17, and 26 in the Boston Naval Shipyard has not yet been formally established or rated. Likewise, so far as the appellate record shows, no formal change has been made in the established position or rating of Master Shipfitter. As has been indicated above, the Board does not consider that the changes in organization and in the assignment of duties and responsibilities as they have affected your position as Master Shipfitter evidence any reduction in your rank. The Board cannot, of course, adjudicate the present matter on the basis of speculation as to the ultimate outcome of the reorganization. In the event that your rank or compensation is reduced by some future administrative action of

your employing agency, you will then be entitled to exercise of a right of appeal to the Commission under Section 14 of the Veterans' Preference Act of 1944.

The decision of the First U. S. Civil Service Region held that your present appeal is not within the purview of Section 14 of the Veterans' Preference Act of 1944. For the reasons set forth above, it is also the decision of the Board of Appeals and Review that your appeal from an order of the Commander, Boston Naval Shipyard, dated February 1, 1961, is not within the purview of Section 14 of the Veterans' Preference Act and that the Civil Service Commission does not therefore, have jurisdiction to adjudicate the appeal. Under Section 22.503 of the Commission's regulations, the decision on an appeal to the Board shall be final, and there is no further right to appeal.

For the Commissioners:

Sincerely yours,

E. T. GROARK,
Chairman, Board of Appeals and Review.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Civil No. 3293-62

FRANCIS J. DUGAN, *Plaintiff*,

vs.

FRED KORTH, ET AL., *Defendants.*

NOTICE OF APPEAL

Notice is hereby given this 19th day of December, 1963, that Francis J. Dugan, Plaintiff hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 21st day of October, 1963 in favor of Defendants, Fred Korth, Frederick Lawton, Robert Hampton and John W. Macy, Jr. against said Plaintiff, Francis J. Dugan.

/s/ WARREN E. MILLER,
Attorney for Plaintiff,
FRANCIS J. DUGAN.

The Clerk will please serve David C. Acheson, United States Attorney and Ellen Lee Park, Assistant United States Attorney.

(508-2)

BRIEF FOR THE APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1963

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

United States Court of Appeals

for the District of Columbia Circuit

WARREN E. MILLER,

810 Eighteenth Street, N.W.,

Washington, D. C.,

Attorney for Appellant.

FILED JUN 1 1964

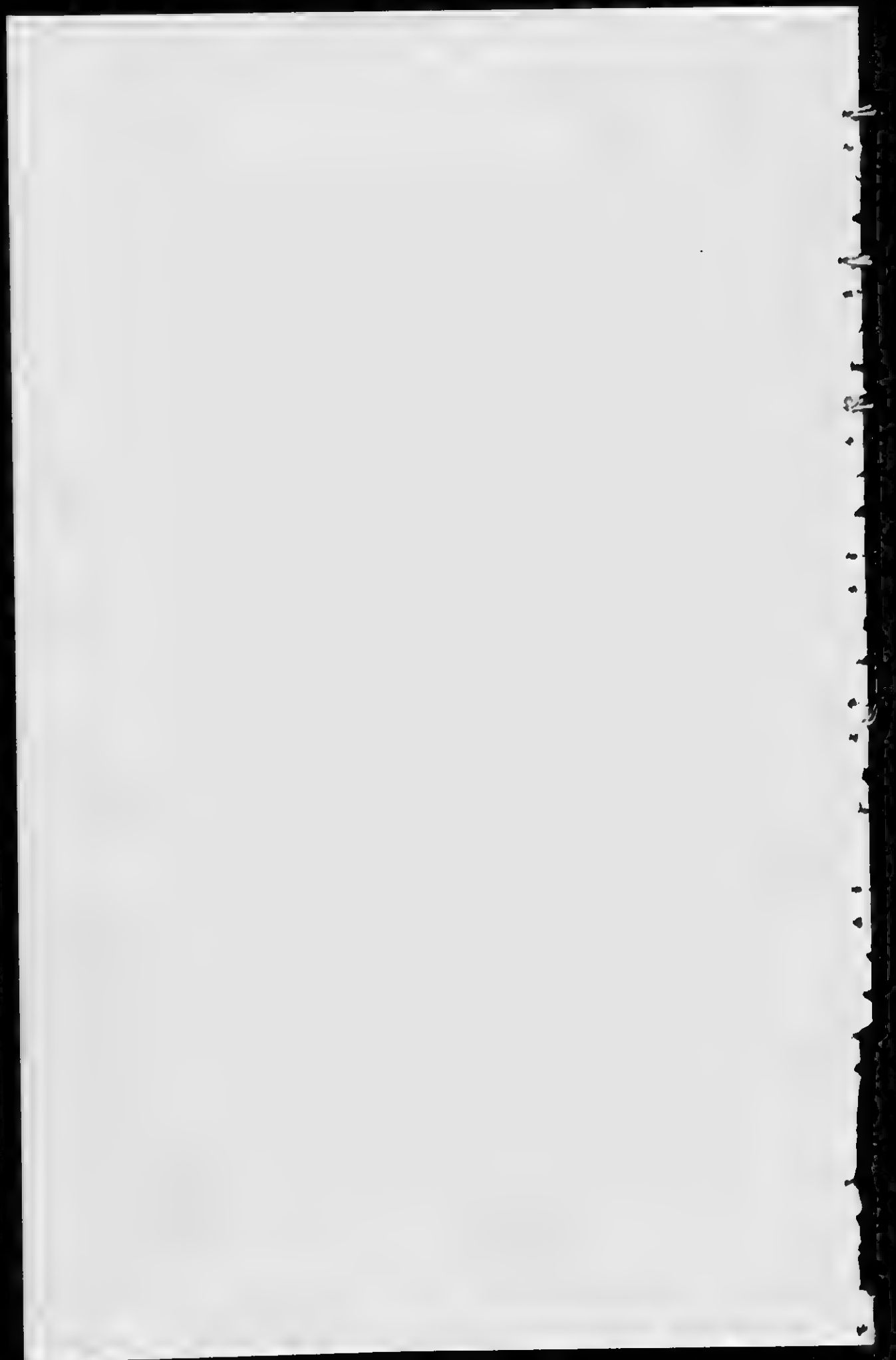
Nathan J. Paulson
CLERK



QUESTIONS PRESENTED

Whether appellant, a permanent civil service employee entitled to veterans' preference, was reduced in rank contrary to the provisions of Section 14 of the Veterans' Preference Act, Title 5 USC 863, and in violation of Section 12 of that act, Title 5 USC 861.

Whether appellant was denied procedural due process by the action of the Civil Service Commission refusing to act on appellant's appeal unless the Navy Department issued a standard personnel action form and the Navy Department refusing to issue such form unless ordered to do so by the Civil Service Commission, as a result of which appellant was not accorded the right of appeal as authorized by the Veterans' Preference Act.



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STATUTE

Section 14 of the Veterans' Preference Act of 1944
(Title 5, USC 863) provides:

"No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be * * * reduced in rank or compensation * * * except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance

written notice stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision”.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1963

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

BRIEF FOR THE APPELLANT

Jurisdictional Statement

Judgment in the above case was entered on October 21, 1963. (J.A. 148) Notice of appeal was filed on December 19, 1963. (J.A. 186)

Jurisdiction of this appeal is granted under Title 28, Section 1291 of the United States Code.

Statement of the Case

The question here is whether appellant was reduced in rank and did letter of February 1, 1961, from the Boston Shipyard Commander (JA 320-321) constitute adverse personnel action in this case.

Prior to the Bureau of Ships Shop Grouping Reorganization in the Boston Naval Shipyard, appellant, a permanent Civil Service employee entitled to veterans' preference as conferred by Section 14 of the Veterans' Preference Act of 1944 (5 USCA 863), served as Master Shipfitter and was in complete charge of personnel and work performed in the Structural Group (JA 46-48) of Shop 11 (JA 46) and Shop 26 (JA 47-48). Mr. F. J. Simon, a non-veteran and a Master Sheetmetal Worker, was in charge of Shop 17.

On February 1, 1961, the Boston Shipyard Commander wrote appellant as follows (JA 320-321):

"By my letter to you of 30 November 1960 you were advised of the grouping of Shops 11/26 and 17 and of Mr. Simon's selection as Group Master, and that you were to continue to direct the affairs of your shop as heretofore, pending my approval of an organization plan for the shop group.

"The organizational plan for your shop group has been submitted and generally approved. Accordingly, as of this date Mr. Simon has been given full authority to implement the plan as approved, and has been assigned full responsibility for over-all policy, administration and operation of all shops included in his group.

"As head of Shops 11/26, you will report directly to and will be accountable to Mr. Simon for all matters

affecting the organization, facilities, and administration of the Shipfitting and Welding Shops, and for such other additional duties as he may assign in connection with the over-all shop grouping plan. In my considered opinion shop grouping offers many opportunities for improving our operations and enhancing the effectiveness of the support which we furnish the Fleet. I am sure that I can count on you to continue to give the plan and Mr. Simon your wholehearted and unfailing support and cooperation."

Appellant considered the above letter as adverse personnel action against him and on February 6, 1961 (JA 177-178) appealed to the Director, First U. S. Civil Service Regional Office, upon the grounds that the above letter reduced him in rank and that the facts showed there had been a reduction in rank in that he had moved down one level in the Senior Supervisory Level.

Appellant appealed from the action taken by the Director, First U. S. Civil Service Regional Office (JA 177-178). He was advised (JA 204) that his appeal was not within the purview of Section 14 of the Veterans' Preference Act of 1944 because no adverse personnel action had been effected by the Shipyard. Appellant then appealed to the Board of Appeals and Review of the U. S. Civil Service Commission (JA 205-211), and submitted arguments in support of this appeal on the following dates:

May 29, 1961 (JA 213-228)

June 26, 1961 (JA 231-235)

July 17, 1961 (JA 236-247)

Appellant submitted to the Board of Appeal and Review reasons why the action of the Regional Office of the U. S. Civil Service Commission should be overruled, on

September 12, 1961 (JA 250-258) and
October 6, 1961 (JA 260-263).

On October 27, 1961 (JA 264-267) the Board of Appeals and Review advised appellant that it had ruled that his appeal was not within the purview of Section 14 of the Veterans' Preference Act and the Civil Service Commission would not have jurisdiction to adjudicate his appeal.

Statement of Points on Appeal

1. The court erred in sustaining defendants' motion for summary judgment.

2. The court erred in denying plaintiff's motion for summary judgment.

3. The court erred in not holding that the transfer of the final authority and responsibility for the final decision-making and establishment of policy and control of all operations of shops 11 and 26 at the civilian level of the Group Master position and the resultant loss of decision-making and control, and the transfer from the supervision of plaintiff to the supervision of the Group Master of approximately fifty of the functions which plaintiff was formerly performing constituted a reduction in plaintiff's rank within the meaning of the provisions of Sections 12 and 14 of the Veterans' Preference Act.

4. The court erred in not holding that the policy adopted by the Secretary of the Navy and the Commissioners of the Civil Service Commission resulted in plaintiff's loss of due process and procedural error when he was unlawfully deprived of his right to appeal from the adverse action

of the Secretary of the Navy to the Civil Service Commissioners because the U. S. Civil Service Commission's policy was that it would not act unless and until the Navy Department issued a standard personnel action form; and the Navy Department's policy, which was contrary to the requirements of the Navy Department's regulations, was not to issue such form unless the Civil Service Commission so ordered. Plaintiff's right of appeal as authorized by the Veterans' Preference Act was thus nullified by such combined arbitrary and capricious action of all defendants.

5. The court erred in not finding that there was procedural error when the Navy Department did not comply with the procedural requirements prescribed for restoring an employee after improper reassignment to a position of lower rank or grade.

6. The court erred in not finding that there was procedural error in that plaintiff was reduced in rank contrary to the provisions of Section 14 of the Veterans' Preference Act of 1944 and in violation of Section 12 of that Act, in that:

(a) No reasons were given in writing for such reduction in rank;

(b) Plaintiff was not given a reasonable time for answering a proper notice in person and in writing;

(c) Thirty days' advance, written notice was not given, stating any and all reasons specifically and in detail for such proposed action;

(d) Plaintiff was not given reasonable time for furnishing affidavits in support of his answer to a proper notice;

(e) Plaintiff was not given the right to appeal to the Civil Service Commission from the adverse decision of the administrative officer who reduced his rank although he

timely filed a written appeal after receipt of such notice of adverse decision;

(f) Defendants Numbers 2, 3 and 4 arbitrarily refused to consider plaintiff's appeal, giving as their reasons that he had not been reduced in rank within the purview of Section 14 of the Veterans' Preference Act.

7. The court erred in not finding that there was procedural error in that the Navy Department did not follow pertinent Navy Department regulations in the action taken in this case, which resulted in reducing plaintiff in rank.

8. The court below erred in failing to find that there was procedural error when defendants 2, 3 and 4, who were Commissioners of the U. S. Civil Service Commission, refused to entertain plaintiff's appeal.

9. The court below erred in not finding that there was procedural error when defendants numbered 2, 3 and 4 (Commissioners, U. S. Civil Service Commission) did not recognize that letter to plaintiff from the Shipyard Commander dated 1 February 1961 changed plaintiff's former position; and that said letter and changes made in plaintiff's responsibilities resulted in the reduction in rank of plaintiff in the organization, reporting and counseling levels, and reduction in plaintiff's duties, authorities and responsibilities by transfer of such duties, authority and responsibilities from plaintiff to the Group Master.

10. The court erred in not finding that there was procedural error in that the new duties and positions of plaintiff and F. J. Simon had not been properly established and defined in accordance with Navy Department regulations when the concurrent reassignment of plaintiff and F. J. Simon were made effective 1 February 1961.

11. The court erred in not finding that there was procedural error when the Board of Appeals and Review of

the U. S. Civil Service Commission refused to take jurisdiction of plaintiff's appeal from the action of defendant number 1 in reducing him in rank; and such action of defendants numbered 2, 3 and 4 was arbitrary, capricious and contrary to law.

12. The court erred in not finding that there was procedural error when defendant number 1 refused to restore plaintiff to the duties and rank which he held prior to 1 February 1961.

13. The court erred in not holding that the appointment of Mr. F. J. Simon, a non-war veteran, as Group Master instead of appointing plaintiff as Group Master was contrary to Navy regulations.

14. The court erred in not finding that there was a transfer of functions of plaintiff's former position of Master Shipfitter to the Group Master position.

15. The court erred in not recognizing that the failure of defendant The Secretary of the Navy to appoint plaintiff as Group Master resulted in plaintiff not receiving the increased compensation paid the Group Master after 1 February 1961 and such loss of compensation showed that plaintiff had been reduced in rank.

16. The court erred in failing to hold that there are issues of fact to be determined here which precluded the granting of defendants' motion for summary judgment.

17. The court erred in not holding that the record contains sufficient factual evidence to justify a trial upon the issue of whether the plaintiff experienced a reduction in rank within the meaning of Section 14 of the Veterans' Preference Act, and he should have an opportunity to prove his contentions in this proceeding if the court does not hold he is entitled to summary judgment.

18. Other errors apparent of record.

Summary of Argument

1. Appellant was reduced in rank, contrary to Section 14 of the Veterans' Preference Act.
2. Appellant was denied procedural due process.
3. The requirements of Section 14 of the Veterans' Preference Act are mandatory.

ARGUMENT AND BRIEF

I. Appellant was reduced in rank, contrary to Section 14 of the Veterans' Preference Act.

1. Evidence that appellant has been reduced in rank is found in the change in his organizational level from organizational level 3 to organizational level 4. Appellant formerly performed the duties of the Master Shipfitter position in the Boston Naval Shipyard which duties February 1, 1961, were transferred from him by written order of the Shipyard Commander (JA 160). His position as Master Shipfitter has been reduced one level in the Senior Supervisory Organizational levels of the activity, and he has been reduced from organizational level 3 to organizational level 4. The reporting level of supervision of appellant has also been reduced one level. While formerly he reported directly to the Production Officer, a Naval Captain as Production Department head in organizational level 2, he now reports to the Structural Group Master, a civilian position in organizational level 3 (JA 160).

2. The functions, duties and responsibilities that were performed by the appellant as Master Shipfitter have been transferred to the Group Master (Mr. Simon) and now Mr. Simon exercises the full, complete and final authority over all areas and operations of Shops 11 and 26 to exactly

the same extent that appellant as Master Shipfitter did prior to February 1, 1961. Appellant has been deprived of the complete and final authority over Shops 11 and 26 which he had prior to February 1, 1961, and such authority has been transferred to the Group Master (JA 161). Prior to February 1, 1961, as Shipfitter he performed all the duties to exactly the same extent that such duties are now performed by the Group Master (JA 164).

3. These duties which appellant no longer performs are 47 in number and each is listed in detail at JA 161-164. This shows his responsibility since February 1, 1961, has been lessened, his authority has been diminished, his grade determinant functions have been transferred to the Group Master, and his status is now subordinate to the Group Master and appellant's actual duties have been drastically curtailed and reduced (JA 165).

4. As an example (JA 164), appellant does not have the authority to approve the installation of a drinking fountain in the supervisors' room, whereas formerly appellant was in complete charge of Shops 11 and 26.

5. A substantial financial loss to appellant has resulted since February 1, 1961, through a rotation policy established for overtime for the Group Masters. They report in on an overtime and extra-pay basis once or twice weekly for a period of two hours on the off shifts and are to (JA 164) rotate week-end overtime assignments among themselves during periods of week-end overtime work. As a result of this policy, the Group Masters have become eligible to receive additional pay in each weekly pay period of from six to eight hours amounting to from \$36 to \$117 weekly. This amounts to a loss of compensation to appellant because, if the benefits of the Veterans' Preference Act had been granted him, he would have been eligible to

receive this additional weekly compensation under this newly established policy.

6. Appellant has suffered extensive loss of status and prestige and his reputation has suffered as a result of the change in his position (JA 167). He has been ordered to relocate to a much smaller and much plainer office than he held prior to February 1, 1961 (JA 165); his seating assignments at social functions sponsored by shipyard-connected private organizational groups have been altered to reflect his new subordinate rank and status as a non-Group Master (JA 166); appellant, being in a non-Group Master position, is not now invited to the same official functions which it was Navy Department policy to invite him to and now only the Group Masters are so invited. This holds good with respect to invitations from shipyard-connected private organizations (JA 166).

7. Section 14 of the Veterans' Preference Act (5 USC 861) states unequivocally that persons with appellant's status shall not be reduced in rank except for such cause as will promote the efficiency of the service and for reasons given in writing and at least 30 days' advance written notice stating all reasons specifically and in detail for such proposed action, with the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer. This procedure was not followed in this case, so this court is asked to require appellees to give full force and effect to the provisions, intent and purpose of Section 14 of the Veterans' Preference Act.

II. Appellant was denied procedural due process.

1. Appellant's right of appeal as authorized by the Veterans' Preference Act was nullified by the appellees Civil Service Commissioners adopting the policy here that the Civil Service Commission would not act unless and until

the Navy Department issued a standard personnel action form and the Navy Department adopting a policy here to not issue such form unless and until the Civil Service Commission so ordered. The result of this is that appellant's right of appeal as authorized by the Veterans' Preference Act was nullified by the above mentioned combined arbitrary and capricious action of all appellees, and constituted procedural error.

2. Section 12 of the Veterans' Preference Act was not complied with in that appellant did not receive an offer to follow the functions of his former position of Master Shipfitter when the supervision of Production Planning and Control and Administrative, Clerical and Personnel Division was transferred to the Group Master on February 1, 1961.

3. Naval Civilian Personnel Instruction 351.9-4(c) and 351.9-4(d)(1) required an offer to follow the functions being transferred must be extended to all Retention Group I, II, and III employees in positions identified with transferred functions.

NCPI 351.4-3(a) provides (JA 21-22):

"4-3. RETENTION GROUPS, SUBGROUPS, AND CREDITS.

"a. General.

"Relative retention preference for reduction-in-force action is based on tenure, veteran preference, length of service, and performance ratings.

"(1) Initially employees are placed in the Retention Group I, II, or III based on the tenure of their appointment as described in paragraph b and c below. Within each competitive level all employees in Retention Group III are reached for action before any employee in Retention Group I or II and all employees in Reten-

tion Group II are reached for action before any employee in Retention Group I.

"(2) Within each retention group, employees are divided into two subgroups. Those who are entitled to veteran preference are in Subgroup "A" and all others are in subgroup "B". Within each retention group all employees in subgroup "b" are reached for action before any employee in subgroup "A".

"b. Retention groups—competitive service.

"(1) Group I

"This group consists of career employees who have completed probation.

"(c) Incumbents of positions brought into the competitive service who have acquired competitive status and have satisfied the service requirement for career tenure."

"(d) Subgroups.

"Employees entitled to veteran preference are in subgroup "A" of their retention group. Disabled veterans do not enjoy any superiority in reduction in force as a result of their disability. All other employees are in subgroup "B."

4. If the foregoing reduction-in-force procedure and Retention Preference Regulations of the Navy had been followed, appellant would have been reassigned to Group Master position on February 1, 1961. As it was not followed, procedural due process was violated.

5. Procedural error occurred as set forth in appellant's statements of points on appeal numbered 3 through 12 (see Points on Appeal, this brief p. 4-7).

6. Appellees erred in not finding that there was a trans-

fer of functions of appellant's former position of Master Shipfitter to the Group Master position and procedural error occurred when the regulations were not followed pertaining to transfer of functions. The following of these regulations would have resulted in appellant, a Civil Service preference eligible, being appointed Group Master instead of Mr. F. J. Simon, who did not possess such preference.

7. The record amply sustains appellant's position that the court below erred in denying his motion for summary judgment and in sustaining appellees' motion because of the unlawful and arbitrary and capricious action taken by all the appellees.

8. The Supreme Court has determined that Departmental regulations establishing rights for employees must be complied with. *Service v. Dulles*, 354 U.S. 363; *Watson v. U.S.*, 355 U.S. 23.

III. *The law is well settled that the requirements of Section 14 of the Veterans' Preference Act (5 USC 863) are mandatory.*

The Veterans' Preference Act provides in Section 14 that "no permanent preference eligible . . . shall be . . . reduced in rank or compensation . . ." Any reduction in rank of a person with military preference violates the above Act.

In *Stringer v. United States*, 90 F.Supp. 375, at page 379, referring to Section 14 of the Veterans' Preference Act, the United States Court of Claims said:

"The requirements of Section 14 are specific and mandatory. Neither this court nor the Civil Service Commission, nor the Chief of Engineers can disregard them. Strict compliance is required. *Lamb v. United*

States, Ct.Cl., 90 F.Supp. 369; *Gadsden v. United States*, 78 F.Supp. 126, 111 Ct.Cl. 487; *Wittner v. United States*, 76 F.Supp. 110, 110 Ct.Cl. 231; *Elchibegoff v. United States*, 106 Ct.Cl. 541.”

Appellant contends that certain procedural rights given him by the Veterans' Preference Act were denied. As was said by the United States Court of Claims in *Washington v. United States*, 147 F.Supp. 284, at page 286:

“In this situation we are not authorized to consider the merits of plaintiff's case but merely whether or not his procedural rights have been violated. *Eberlein v. United States*, 257 U.S. 82, 42 S.Ct. 12, 66 L.Ed. 140; *Engelhardt v. United States*, 125 Ct.Cl. 603; *O'Brien v. United States*, 124 Ct.Cl. 655. * * *

This court on different occasions has decided that the acts of agencies and the Civil Service Commission “violative of the law and applicable regulations” may be reviewed. *Ritter v. Strauss*, 261 F.2d 767, 104 U.S. App. D.C. 301. *Feldman v. Herter*, 276 F.2d 485, 107 U.S. App. D.C. 239. *Kinter v. Toll*, 276 F.2d 486. *Powell v. Brannan*, 91 U.S. App. D.C. 16, 196 F.2d 871.

The Joint Appendix which includes the entire record in this case shows all of the facts and it is appellant's position that they are amply sufficient for a finding in appellant's favor upon appellant's motion for summary judgment for the reasons set forth above.

The facts set forth in the Joint Appendix are insufficient to warrant the decision of the court below in granting appellees' motion for summary judgment.

Conclusion

For the foregoing reasons, appellant respectfully submits that the judgment of the District Court should be reversed.

Respectfully submitted,

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(1262-5)

BRIEF FOR APPELLEES

United States Court of Appeals
For the District of Columbia Circuit

United States Court of Appeals
for the District of Columbia Circuit

No. 18,371

FILED AUG 28 1964

FRANCIS J. DUGAN, *Appellant*,

v.

Nathan J. Paulson
CLERK

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID C. ACHESON,
United States Attorney.

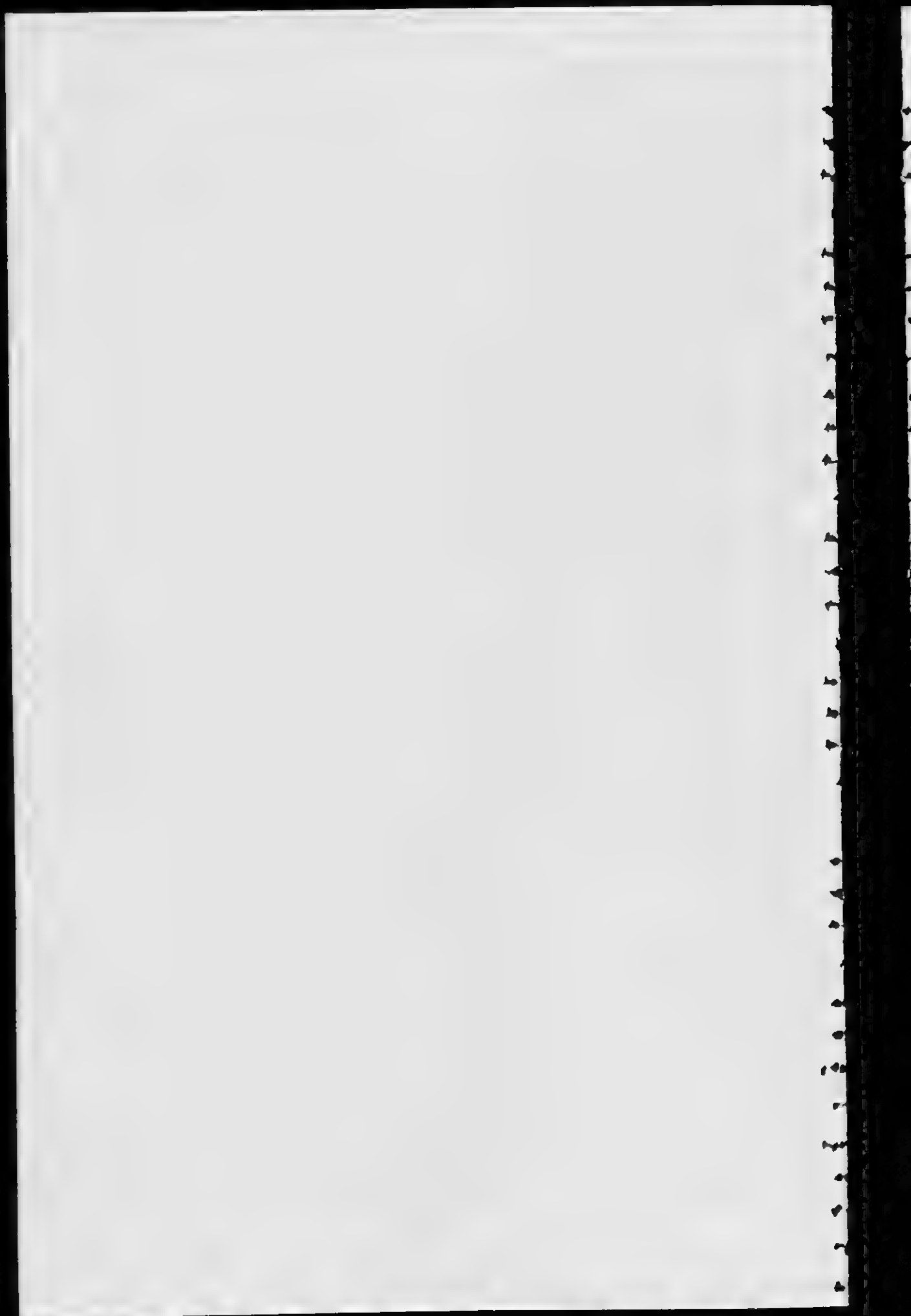
FRANK Q. NEBEKER,
ELLEN LEE PARK,
GERALD E. GILBERT,
Assistant
United States Attorneys.



QUESTION PRESENTED

In the opinion of the appellee, the following question is presented:

Whether there was any basis for the Civil Service Commission to find that appellant suffered no reduction in rank so that he was not entitled to review by the Commission under the provisions of the Veterans' Preference Act.



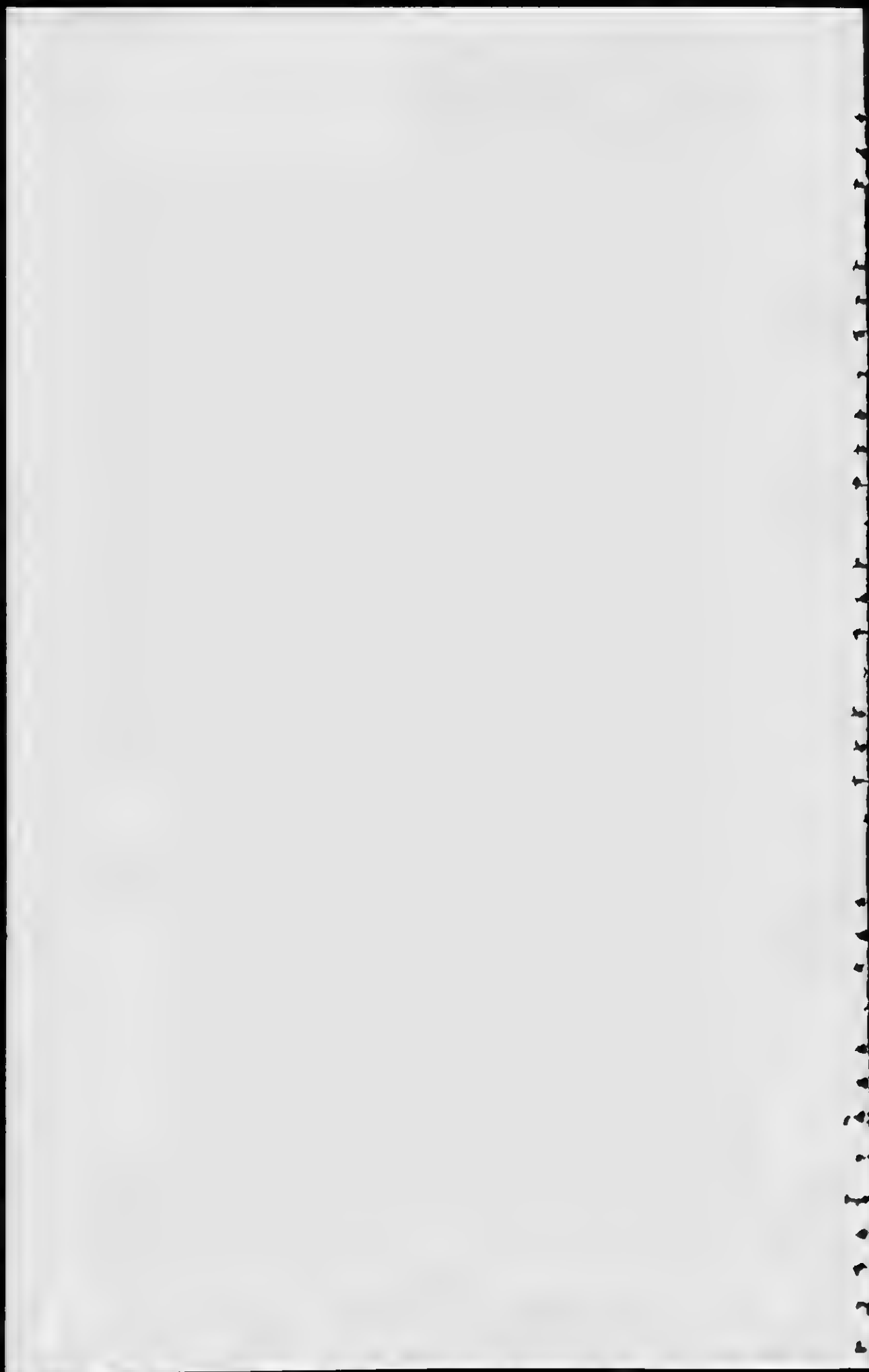
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**United States Court of Appeals
For the District of Columbia Circuit**

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

In 1960 the Bureau of Ships announced a reorganization for the Naval Shipyards designed to reduce overhead costs by grouping shops in the production department (J.A. 175, 201, 320). As a result of this reorganization the Boston Naval Shipyard set up five major groups of shops, each of which was headed by a Group Master (J.A. 181, 320).

Prior to February 1, 1961, appellant was a Master Shipfitter in the Boston Naval Shipyard, serving as the ranking civilian official in Shops 11 and 26 (J.A. 3). By letter of February 1, 1961, the Boston Shipyard Commander advised appellant that he was to continue to direct the affairs of

his shop as in the past, pending the approval of an organizational plan for the shop group. Appellant was further advised that a Mr. Simon had been given full responsibility for over-all policy, administration and operation of all shops included in his group. The appellant, as head of Shops 11 and 26, was told that he would report directly to and would be accountable to Mr. Simon for all matters affecting the organization, facilities, and administration of the Shipfitting and Welding Shops, and for such other additional duties appellant may be assigned in connection with the over-all shop grouping plan. (J.A. 176).

On February 6, 1961, appellant appealed to the First United States Civil Service Region, alleging that the action incident to the grouping of Shops 11, 17, and 26, constituted a reduction in rank for him and that he had in effect moved down one level in the Senior Supervisory level. His contention was based on the fact that whereas prior to February 1, 1961, he reported directly to the Production Officer, subsequent thereto he reported to a Group Master who in turn reported to the Production Officer. (J.A. 177). The First United States Civil Service Region, then requested the Commander of the Boston Naval Shipyard to furnish them with the details of any changes in the organizational structure with reference to appellant's position (J.A. 179). The Commander replied that appellant continued to hold the rating of Master Shipfitter and continued to draw a salary of \$13,104 per annum, which was the same salary as that of Mr. Simon, the Group Master. The Commander further stated:

This Shipyard holds to the position that a reduction in rank cannot exist solely on the basis that a level of reporting authority is injected between organizational levels. The ultimate test should be applied to the elements as they relate to Mr. Dugan's basis of rank. The elements as they relate to Mr. Dugan's position are: responsibility, authority, function, status, seniority, and pay. These remain unchanged, Mr. Dugan's assignment remains unchanged, and the functions of the shops over which he exercises administrative control remain unchanged. (J.A. 181-183).

The First United States Civil Service Region established that appellant was a preference eligible within the meaning of the Veteran's Preference Act, and assumed jurisdiction of his appeal for the sole purpose of ascertaining whether the Shipyard effected a reduction in rank within the purview of the Veteran's Preference Act and Civil Service Regulations. In a decision dated May 3, 1961, the First United States Civil Service Region reviewed the evidence in detail and determined that appellant's case was not within purview of Section 14 of the Veteran's Preference Act because no adverse personnel action had been effected by the Shipyard with respect to appellant. (J.A. 198-204).

Appellant then appealed to the Civil Service Commission's Board of Appeals and Review (J.A. 205). By letter of October 27, 1961, the Board of Appeals and Review advised appellant that his appeal from the order of the Commander, Boston Naval Shipyard, dated February 1, 1961, was not within the purview of Section 14 of the Veteran's Preference Act and that the Civil Service Commission did not have jurisdiction to adjudicate it. In so ruling the Board determined that the mere change in organizational structure did not reduce appellant's rank as Master Shipfitter and ranking civilian supervisor in Shops 11 and 26. With respect to appellant's contention that some of his former duties and responsibilities had been assigned to the Group Master, the Board said:

The Board has given very careful consideration to your contention that some of your former duties and responsibilities have been assigned to Mr. Simon as Group Master. So far as the record shows, your contention is valid only with respect to supervision of certain administrative and support services which were formerly maintained in each shop but which have since been consolidated for the shop group under supervision of the Group Master. In the opinion of the Board, supervision over such administrative and support services constituted a minor part of your duties and responsibilities and did not have any significant effect upon the rank of the position of Master Shipfitter. Therefore, the Board does not consider

that the loss of those duties and responsibilities indicates that you have been reduced in rank within the meaning of Section 14, of the Veteran's Preference Act. (J.A. 264-267).

Appellant thereafter requested the Civil Service Commissioners to review his case (J.A. 270). He was advised by letter of February 16, 1962, that his request for reopening his appeal was denied and the Board's decision of October 27, 1961, remained as the Commission's final decision in the matter (J.A. 319).

Appellant filed an amended complaint in the United States District Court on November 1, 1962 (J.A. 1). Appellees filed an answer to the complaint on February 28, 1963, and further made a motion for summary judgment on May 14, 1963, on the ground that there was no genuine issue as to any material fact (J.A. 7-9). Appellant opposed appellee's motion for summary judgment (J.A. 11, 119), and also filed a motion for summary judgment (J.A. 136-140). On October 21, 1963, Judge Joseph C. McGarraghy of the District Court, granted appellee's motion for a summary judgment (J.A. 148). This appeal followed.

STATUTES INVOLVED

Title 5, United States Code, Section 861, (Section 12 of the Veterans' Preference Act of 1944) provides in pertinent part:

In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: * * * *And provided further,* That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in positions for which they are qualified, before such agency, or agencies, shall

appoint additional employees from any other source for such positions.

Title 5, United States Code, Section 863 (Section 14 of the Veterans' Preference Act of 1944) provides in pertinent part:

No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be * * * reduced in rank or compensation * * * except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice * * * stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision * * *.

Title 5, United States Code, Section 868, provides:

It shall be the authority and duty of the Civil Service Commission in all cases under the classified civil service to make and enforce appropriate rules and regulations to carry into full effect the provisions, intent, and purpose of this chapter and such Executive orders as may be issued pursuant thereto and in furtherance thereof: *Provided*, That any recommendation by the Civil Service Commission, submitted to any Federal agency, on the basis of the appeal of any preference eligible, employee or former employee, shall be complied with by such agency.

SUMMARY OF ARGUMENT

The District Court did not err in sustaining the Civil Service Commission's finding that appellant was not reduced in rank and therefore was not entitled to review under the provisions of the Veterans' Preference Act.

The Civil Service Commission is responsible for carrying out the provisions of the Veterans' Preference Act, and their determination is entitled to great weight in the courts. To reverse the District Court this Court would have to find that the Civil Service Commission had no support in the record in determining that appellant was not reduced in rank. A cursory review of the record shows that there were overwhelming grounds for the Civil Service Commission's decision.

Prior to 1961 appellant was a Master Shipfitter, serving as the ranking official in Shops 11 and 26, and he reported directly to the Production Officer. As a result of a reorganization instituted by the Bureau of Ships in 1961, a new level of supervision called a Group Master was inserted between appellant and the Production Officer. The Group Master, set up as a deputy to the Production Officer, was given certain responsibilities concerning Shops 11 and 26, and another shop which did not concern any of appellant's duties prior to the reorganization (obviously a job of wider and different responsibilities than appellant's job). Appellant claims that because some of his former duties were transferred to the Group Master, and because he now reports to the Group Master and not directly to the Production Officer, he was reduced in rank, and therefore his rights under the Veterans' Preference Act were violated. The fact that appellant reports to the Group Master rather than the Production Officer is immaterial insofar as his rank in Shops 11 and 26 is concerned. The record shows that subsequent to the reorganization appellant retained his rating as a Master Shipfitter, suffered no loss in pay, and continued to be the head of Shops 11 and 26. It is quite evident that the Civil Service Commission had substantial support for their determination that appel-

lant was not reduced in rank, and therefore was not entitled to review under the Veterans' Preference Act. That determination should not be disturbed by the courts.

Appellant's contention that the transfer of some of his duties to the Group Master entitled him to special treatment under Title 5 USC 861 is without merit. It has been established by this Court that the transfer of certain duties of individual workers of a class or grade to workers of another class or grade does not constitute a transfer of functions within the meaning of Title 5 USC 861.

ARGUMENT

Appellant was not reduced in rank.

In 1960 the Bureau of Ships announced a reorganization of the Naval Shipyards. (J.A. 175, 201, 320). This reorganization occurred in 1961 and resulted in the establishment of five major groups of shops at the Boston Naval Shipyard, with each shop headed by a Group Master. (J.A. 181, 320).

Prior to 1961, appellant, a Master Shipfitter and ranking civilian official in Shops 11 and 26, reported directly to the Production Officer. (J.A. 3, 199). By letter of February 1, 1961, the Boston Naval Shipyard Commander advised appellant that he was to continue to direct the affairs of his shop as in the past, and as head of Shops 11 and 26 he would report directly to the Group Master. (J.A. 176). After the reorganization appellant retained his official rating and salary as a Master Shipfitter, which he does not deny. (J.A. 106, 157, 181, 206, 292). However, he contends that because some of the functions which he performed prior to the reorganization were transferred to the newly created post of Group Master, and because he no longer reports directly to the Production Officer, he suffered a reduction in rank, and his rights under Title 5 USC 861, and 863, of the Veterans' Preference Act of 1944 were violated.

The Civil Service Commission, which under Title 5 USC 868, is vested with the responsibility of carrying into effect the provisions of the Veterans' Preference Act, determined

that appellant had not been reduced in rank and therefore was not entitled to review under Title 5 USC 863. There was no material issue of fact as the Civil Service Commission, in basing its decision upon the record, recognized that some of appellant's prior duties and responsibilities had been transferred to the Group Master, a position of a new supervisory level between appellant and the Production Officer. The Commission's determination is entitled to great weight in the courts. *Johnson v. Britton*, 110 U.S. App. D.C. 164, 168, 290 F.2d 355, 359 (1961). It should not be overturned if it has support in the record. To reverse the District Court this Court would have to find that there was no basis in the record for the Commission's decision that appellant was not reduced in rank. *National Labor Relations Board v. Hearst Publications, Inc.*, 322 U.S. 111 (1944); *Eustace v. Day*, 114 U.S. App. D.C. 242, 314 F.2d 247 (1962); *Hargett v. Summerfield*, 100 U.S. App. D.C. 85, 243 F.2d 29 (1957).

The record reveals substantial support for the Commission's decision. The position of Group Master was set up as a deputy to the Production Officer, and given certain responsibilities involving Shops 11 and 26, and another shop which did not concern any of appellant's duties prior to the reorganization. (J.A. 105, 182). Whether appellant reports to the Group Master or the Production Officer has no significant effect insofar as his rank in Shops 11 and 26 is concerned. Appellant admits that he is the ranking civilian official in Shops 11, but says that he is not the ranking civilian official in Shop 26 because he says that technically he is not a member of Shop 26. (J.A. 124). However, appellant holds the same position as the head of both shops, just as he did prior to the reorganization. (J.A. 106). Appellant also claims a financial loss on the ground that Group Masters who were paid the same salary as Master Shipfitters at the time appellant claims he was reduced in rank (J.A. 181-183), have since that time been allowed to earn extra money in an overtime system. Appellant suffered no loss in pay after the reorganization and

obviously the rate of salary presently paid to Group Masters has no relevance to the issues before this Court. The record shows that subsequent to the reorganization appellant retained his title, salary, and continued to be the head of Shops 11 and 26. Certainly, the determination by the Civil Service Commission that appellant was not reduced in rank, was reasonable, clearly warranted, and should be upheld. The fact that some of appellant's duties were changed in the interest of cutting overhead costs in the Naval Shipyard does not give appellant a right to demand this Court to restore those duties. The courts have consistently held that they will not determine what duties a government employee should perform, or who is suitable for a particular position. Such matters lie solely within the discretion of the executive. *United States v. Shimer*, 367 U.S. 374 (1961); *O'Leary v. Macy*, 111 U.S. App. D.C. 357, 297 F.2d 434, *cert. denied*, 370 U.S. 953 (1961). Furthermore, if appellant appears to say the assignment in 1961 to the position of Group Master constituted a promotion, it is clear that appellant is entitled to no relief. Appellant has no right to a promotion and this Court has no authority to give him one. *Cutting v. Higley*, 98 U.S. App. D.C. 288, 235 F.2d 515, *cert. denied*, 352 U.S. 883 (1956).

The contention that the transfer of some of appellant's duties concerning Shops 11 and 26 to the Group Master required the application of the procedures of Title 5 USC 861 is totally without merit. It has been decided by this Court that the transfer of certain duties of individual workers, or of a class or grade of individual workers, to workers of another class or grade does not constitute a transfer of functions within the meaning of Title 5 USC 861. *McNamara v. Dick*, 116 U.S. App. 271, 323 F.2d 276, *cert. denied*, 375 U.S. 895 (1963); *Steinkirchner v. Wilson*, 101 U.S. App. D.C. 92, 247 F.2d 83 (1957).

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

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United States Attorneys.



REPLY BRIEF FOR THE APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

United States Court of Appeals

Circuit

WARREN E. MILLER,

SEP 2 1964

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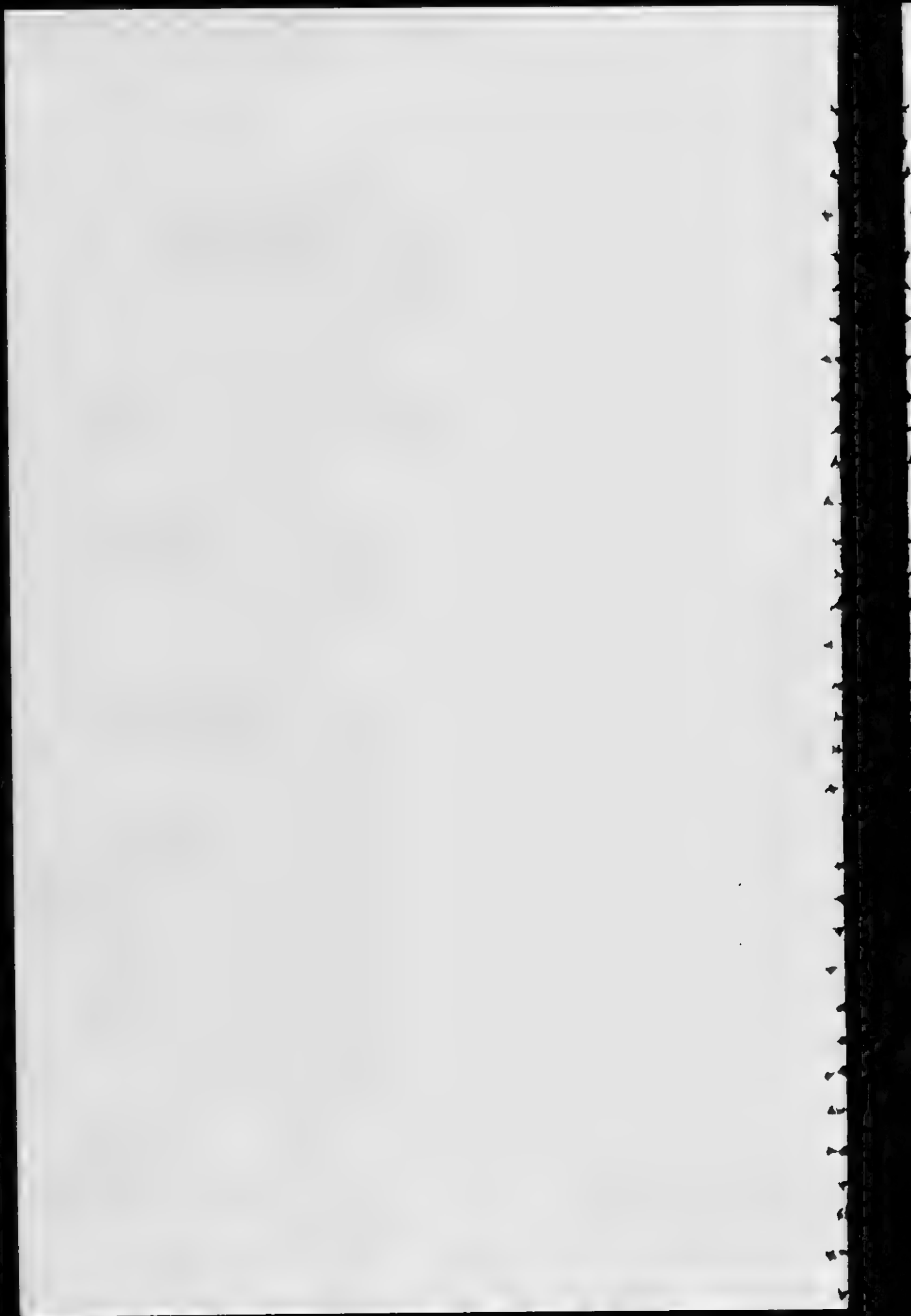
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

REPLY BRIEF FOR THE APPELLANT

Appellee's "Counterstatement of the Case" and "Summary of Argument" leaves the erroneous impression that appellant, who prior to February 1, 1961 was Master Shipfitter and senior Civilian Supervisor of Shops 11 and 26 in the Boston Navy Yard continued to direct the affairs of these shops and to perform the full duties of Master Shipfitter after February 1, 1961 as he did prior thereto. However, the record shows that the actual head of shops after February 1, 1961 was the Group Master and not appellant.

The Shipyard Commander's letter of November 30, 1960 to appellant (JA-175) asked appellant to continue to direct the affairs of his shop as heretofore. Letter of February 1, 1961 to appellant from Shipyard Commander (JA-176)

stated that as of February 1, 1961, Mr. Simon had been assigned full responsibility for overall policy, administration and operation of all shops included in his group and as head of shops 11 and 26 appellant would report directly to and be accountable to Mr. Simon for all matters affecting the organization, facilities and administration of the Shipfitting and Welding Shops and for such other additional duties assigned to him by Mr. Simon. The differences in appellant's duties were that the head of shop recommends to the Group Master who in turn submits final recommendations to the Production Office as the Master Shipfitter formerly did. Appellant further lost the right to decision and control (JA-128). Whereas he previously was in complete charge he now has only limited authority over only the actual production of Shops 11 and 26 as the second highest ranking Senior Civilian Supervisor in the Structural Group (JA-129). The Commander of Mare Island Shipyard (JA-130) in commenting upon the implementation of shop grouping said: "One by-product of the realignment will be the *downgrading* of some current Shop Masters * * * There are 14 masters heading Shops at Mare Island now. The new set-up will find half of them removed and placed in lesser positions." "Downgrading" signifies reduction in rank. As Master Shipfitter appellant held the highest level position in the Structural Group Shop derived from the trade field which increases the authority and responsibility of the position whereas now the Group Master exercises trade supervision over all positions within the group; and appellant has lost this increase in authority and responsibility to the Group Master (JA-130) and is not now in the highest ungraded supervisory level in the organization of the Structural Group which directly derives from the trade fields in which they are engaged.

The following former functions, duties and responsibilities that were performed prior to February 1, 1961, by the appellant as Master Shipfitter were transferred to the Group Master who now possesses and exercises full, complete and final authority over all areas and operations of Shops 11 and 26 at the civilian level to exactly the same extent that such duties were performed by appellant as Master Shipfitter, (JA 161-164):

(d) The formulating and establishing over all shop policy for shops 11/26 composed of over 1300 employees.

(e) The Administration of Shops 11/26.

(f) The operations of Shops 11/26.

(g) The organization of Shops 11/26.

(h) The facilities of Shops 11/26, \$10,421,000 Buildings and Equipment, 260,000 square feet of usable area.

(i) Preparation and submission of Shop Budget; \$1,500,000 yearly.

(j) Such other duties as the Group Master may assign (a catch-all).

(k) Supervision of Shops 11/26 employees (1300).

(l) Supervision of 13 different trades in 15 different ratings, performing diversified trade operations.

(m) Supervision of Shops 11/26 employees over a wide geographical work area, several buildings, many ships, on a three-shift-a-day basis.

(n) Supervision of experimental or non-standard work of Shops 11/26.

(o) Coordinating the efforts of Shops 11/26 in relation to inter and intra-shop relationships, and all other areas.

(p) Supervision of Shop Planning, Clerical and Personnel Sections of Shops 11/26, these are now staff to Group Master.

- (q) Policy meetings with the Production Officer and higher authority.
- (r) Ordered to attend lower grade meetings with the Repair Supt., formerly my Foremen's assignment.
- (s) Scheduling work operations of Shops 11/26.
- (t) Formulating Shops 11/26 Safety policy.
- (u) Determination of "fitness of employees" physical and trade qualification for Shops 11/26.
- (v) Determination of manpower needs for Shops 11/26, by trades and numbers.
- (w) Determination of Supervisory needs of Shops 11/26 by trades and numbers.
- (x) Selection of supervision for Shops 11/26 by trade and number.
- (y) Assignment of supervision for Shops 11/26 by trade and area.
- (z) Determination of training needs of Shops 11/26, types and amounts, by trade.
- (aa) Performance of trade operations of all Shop 11/26 Supervision and artisans.
- (bb) Settlement of trade jurisdictional disputes with labor union officials, or other Shop Masters, relating to Shops 11/26 employees.
- (cc) Responsibility to determine the types and procedures of administrative controls to control and coordinate the production operations of Shops 11/26.
- (dd) The determination of need, selection and assignment of Shop Planners in Shops 11/26.
- (ee) The determination and establishment of Disciplinary Action Policy in Shops 11/26.
- (ff) The determination of policy in personnel matters; types of leave, safety, training, fund drives, blood drives, bond drives, Beneficial suggestions, Incentive Awards, Conservation, etc., for Shops 11/26.

(gg) Determination of need, assignment and selection of administrative personnel for Shops 11/26.

(hh) Determination of need and types of administrative procedures to control Shops 11/26 operations.

(ii) Responsibility for Housekeeping and cleanliness of the building and working areas of Shop 11/26.

(jj) Responsibility for shop indoctrination tours of military personnel newly assigned to the activity in relation to Shops 11/26.

(kk) Responsibility for award presentations to Shop 11/26 personnel (Safety, longevity, Beneficial Suggestion, Superior Performance, etc.) for both final review and presentation.

(ll) Responsibility to determine need for submission of and final review of overtime requests for Shop 11/26.

(mm) Assignment of areas, as to use, in buildings under control of Shops 11/26.

(nn) Resolution of material shortages affecting Shop 11/26 operations.

(oo) Responsibility for procurement, security, and maintenance of Shops 11/26 buildings and equipment.

(pp) Responsibility for timely and economical completion of Shops 11/26 work operations.

(qq) Responsibility for security clearance of personnel of Shops 11/26.

(rr) Responsibility as the highest and final technical authority for Shops 11/26.

(ss) Responsibility as the highest ungraded supervisory position for Shops 11/26; there was not any other civilian position that had authority over Shops 11/26.

(tt) Responsibility for cost control of Shops 11/26 operations.

(uu) Responsibility for executive direction of Shops 11/26.

(vv) Responsibility for final authority in the developing and implementation of programs for Civil Defense—Natural Disaster, Mobilization, etc.

(ww) The rerouting of orders, etc., from higher authority direct to the Group Master position. This is in accordance with the official recognition of my now subordinate status, rank and authority. These orders, etc., were routed directly to the former Master Shipfitter position, when the Master Shipfitter possessed the final authority, etc.

(xx) Prior to 1 Feb. 1961, as Master Shipfitter, with final authority over the grouping of shops then known as the Structural Shop 11/26, I then performed all of the duties, etc., to exactly the same extent, that such duties, etc., are now performed by a Group Master position.

(yy) Authority to exercise any personnel judgment, initiative, and originality in all areas of Shop 11/26 operations.

(aaa) The Production Officer has set up a rotation policy of overtime for the now Group Masters. Specifically, they are to report in on an overtime basis and extra pay status, once or twice weekly for a period of two hours on the off shifts. They are to rotate weekend overtime assignments among themselves, during periods of weekend overtime work. As a result of this policy, the Group Masters, are now eligible to receive additional pay, in each weekly pay period, the equivalent of from 6 to 18 hours of additional pay, amounting to from \$36.00 to \$117.00 weekly. This is a loss of compensation to my position. If my rights as a preference eligible under sections 12 and 14 of the Veterans' Preference Act, Civil Service Regulations, and the NCPL, had been granted to me, I would have been eligible to receive this additional weekly compensation, since this policy was established.

The transfer of functions, duties and responsibilities from appellant prior to February 1, 1961, as indicated above, clearly shows that he did not perform the duties after February 1, 1961, which he performed before that date. This shows conclusively that appellant was actually reduced in rank.

Appellant and F. J. Simon were both qualified and eligible for selection and reassignment to the Group Master position, which reassignment was caused by reorganization. Under Navy Department regulations it was mandatory that effective 1 February 1961 appellant be transferred to the Group Master position (JA 17-29). Procedural error occurred when the Navy Department did not follow their regulations, give preference to appellant, and assign him to the Group Master position.

Notwithstanding appellees' contention that appellant was not reduced in rank, it is significant that 75% of the duties of the non-veteran Group Master, Mr. F. J. Simon, were derived from the position appellant formerly held, that of Master Shipfitter (JA-311).

The substance of appellees' argument appearing on pages 8 and 9 of their brief appears to be that the Court is bound by the administrative decision of the Civil Service Commission that appellant was not reduced in rank. This is obviously not the law, because on numerous occasions the courts have required strict and mandatory compliance with the Veterans' Preference Act by reluctant administrative officials. *Lamb v. United States*, Ct. Cl., 90 F. Supp. 369; *Wittner v. United States*, 76 F. Supp. 110, 110 Ct. Cl. 231.

This Court is not required to accept the finding of an administrative official as to whether appellant was reduced in rank. That is a conclusion. This Court may determine for itself whether, here, as between a non-veteran, Mr. Simon, and appellant, because no written notice was given appellant of his proposed reduction in rank as required by

5 USC, Section 863, this Veteran Preference eligible's procedural rights have been violated.

It was held by this Court in *Reynolds v. Lovett*, 201 Fed. 2d 181, that the failure to give effect to Section 12 of the Veterans' Preference Act was erroneous when this Court said:

"We think that appellees' view that when personnel is reduced the head of an agency may select employees to be retained in any classification on the basis of individual merit and without giving effect to Section 12 of the Veterans' Preference Act is erroneous."

In their argument, appellees on pages 7 and 8 of their brief took the position that appellant was not entitled to review of his case under Title 5 USC 863, holding there was no material issue of fact.

The Civil Service Commission took the position (appellee's brief, page 3) that there had to be a resulting "personnel action" or "position change" of the employee effected by the filing of some prescribed form, before the Commission had authority to determine whether he had been reduced in rank (JA 203-204). They took the position there was no "adverse action" taken (JA 199) and that they had only appellate jurisdiction under Section 14 of the Veterans' Preference Act affecting preference eligible employees who had been reduced in grade by a "position change" or a "personnel action" (JA 203). The Civil Service Commission, therefore, decided that appellant's appeal was not within the purview of Section 14 of the Veterans' Preference Act of 1944 because no "adverse personnel action" had been effected by the Shipyard. That position of the Civil Service Commission is contrary to the fact here, because letter of February 1, 1961 from the Boston Shipyard Commander (JA 320-321) constituted "a

position change" or "personnel action". Therefore, the Civil Service Commission should have entertained this appeal. The failure and refusal to do so (JA 203-204) by the Civil Service Commission constituted a lack of procedural due process, was erroneous, arbitrary and capricious. This Court is urged to so hold.

The duties taken away from appellant on February 1, 1961 to which reference is made by appellees on page 9 of their brief have not been mentioned by appellant for the purpose of having the Court restore him to such duties as appellees imply, but the facts pertaining to appellant's duties (JA 161-164) were mentioned because they are important toward showing his reduction in rank.

The record shows the actual transfer of the foregoing specific functions were fully and completely documented. (JA-161)

At a meeting of the National Association of Department of Defense Supervisors on April 28, 1961, the Commander of the Boston Naval Shipyard answered the following questions as indicated below: (JA-243) * * * (JA-244)

Question: Filling supervisory positions presently vacant, is it up to the Group Master or will the decision remain in the hands of the Shop Master as Head of Shop?

Answer: The Shop Master will make the recommendation to the Group Master with full cognizance of trade lines, etc.

Question: Will the non-group leading Shop Master's position be phased out?

Answer: Yes, chances are that Foremen will replace them in the future.

It is evident that as formerly Head of Shops 11 and 26 in the position of Master Shipfitter appellant has been sub-

jected to a reduction-in-rank, according to this statement of the Commanding Officer.

Previous decisions of the United States Civil Service Commission have established that the lowering of the organizational and reporting levels of a position constitutes a reduction-in-rank of the position (JA-12-14) (JA-98-99) (JA-123) (JA-131-132), in violation of Section 14 of the Veterans Preference Act.

In holding that one Horan was reduced in rank organizationally, the Civil Service Commission rested its decision upon the fact that Horan formerly reported directly to the Comptroller and the Assistant Comptroller whereas in his new position he reports through the Head Accounting and Disbursing Division which the Commission held was evidence that the position to which Mr. Horan was reassigned was one of lower rank than he formerly held and directed that he be restored to his former position retroactively to the date of his reassignment (JA-12-13). The action taken in the Horan case appears from letter of January 29, 1960 from the Chairman of the Board of Appeals and Review of the Civil Service Commission (JA-98-99). That case is ample precedent for the proper disposition of the instant case and that decision should be followed here. Here, as in that case, Section 14 of the Veterans Preference Act of 1944 and Part 22 of the Commission's Regulations are applicable to the position change. If the principle recognized in the Horan case is applied to appellant's next lower level in the organizational and reporting levels, it will be seen that appellant has been subject to a substantial lessening of rank in his new position as Head of Shop in relation to other former equal positions in the immediate area of supervisory relationship.

The guidelines for determining whether a reassignment

constitutes a reduction in rank is found in Naval Civil Personnel Instruction 352-4-4 (JA-123). When those guidelines (1) organization level, (2) levels of supervision and (3) promotional opportunities are applied to the instant case, it is clear that there has been a reduction in appellant's rank (JA-123).

Plaintiff's affidavit submitted in opposition to Defendant's Motion for Summary Judgment (JA-119) which was not controverted recites facts which are sufficient to cause this Court to reverse the action of the Court below when it granted Appellee's Motion for Summary Judgment.

Appellant in his affidavit denied as averred in Paragraph 5 of Appellee's Statement of Material Fact that he is Master Shipfitter because he has not performed the duties of that position since February 1961 (JA-126). Neither does he exercise the former duties of Master Shipfitter (JA-126). In his position as Head of Shops, he lost his former duties, functions, and organizational divisions of Shops 11 and 26 and is now organizationally comparable to individuals with supervisory ratings of foreman and chief quartermen who have similar responsibilities and organizational reporting levels as appellant's present position and were in all respects subordinate to his former position of master shipfitter as defined in the Position Description Sheet (JA-127).

Appellees on page 8 of their brief state that appellant suffered no loss in pay after the reorganization and that the rate of salary presently paid to the Group Master is not relevant to the issues before this Court. However, if appellant had been in the Group Master position as of February 1, 1961, in which he should have been, and had he received his rights as a preference eligible under Sections 12 and 14 of the Veterans' Preference Act, the Civil Service Commission Regulations and the Navy Regulations, he would have received additional pay in each weekly pay

period of from six to eight hours amounting to \$36.00 to \$117.00 per week. This, in effect, amounts to a loss of compensation to him (JA 164-165 and JA 34-36).

Conclusion

For the foregoing reasons and those set forth in the brief for appellant, appellant urges that the judgment of the District Court should be reversed.

Respectfully submitted,

WARREN E. MILLER,
810 Eighteenth Street, N.W.,
Washington, D. C.,
Attorney for Appellant.

(2598-1)

APPELLANT'S PETITION FOR REHEARING

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1963

No. 18,371

FRANCIS J. DUGAN, *Appellant*,

v.

FRED KORTH, ET AL., *Appellees*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

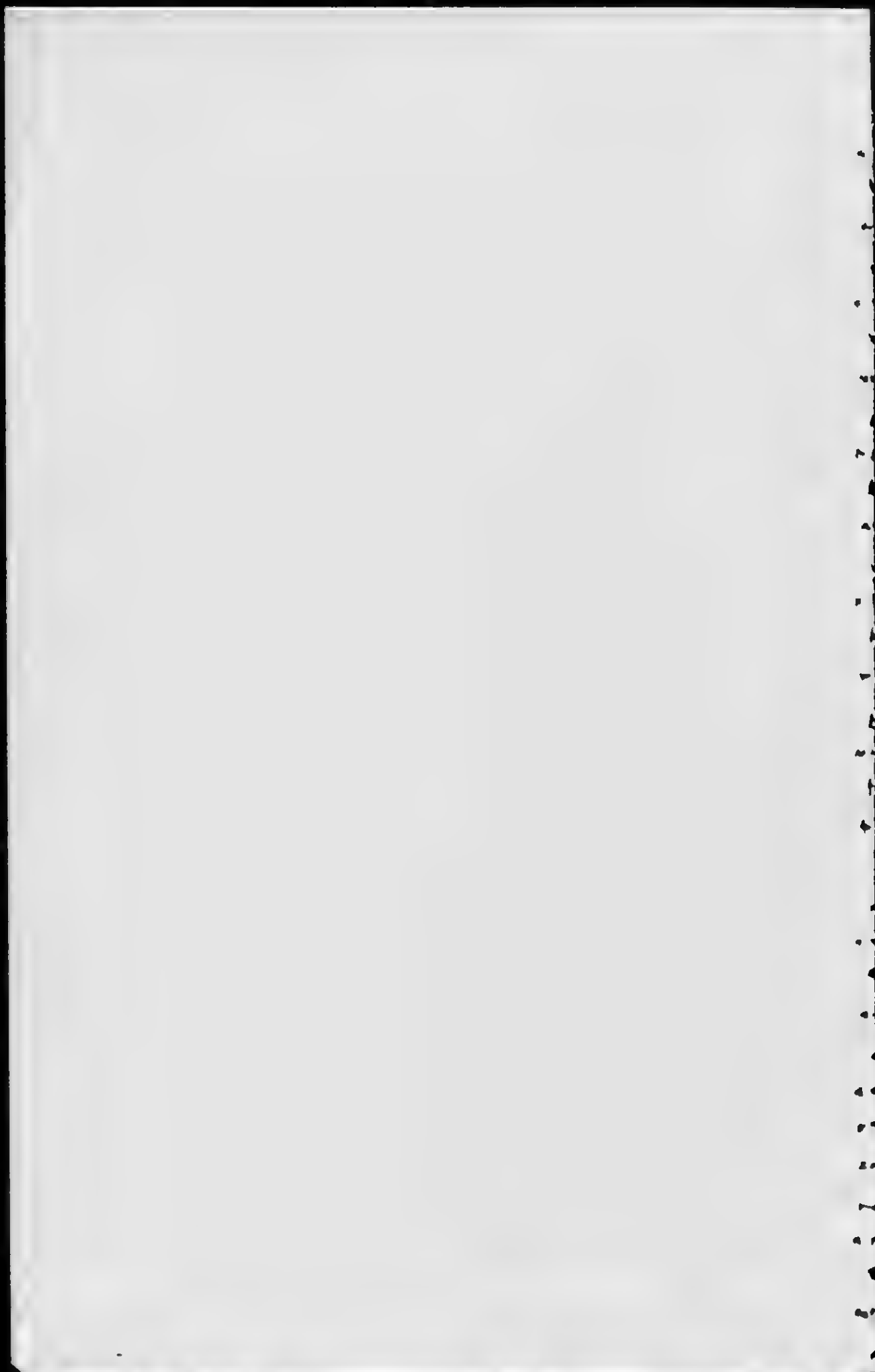
United States Court of Appeals

for the District of Columbia Circuit

FILED JAN 26 1965

Nathan J. Paulson
CLERK

WARREN E. MILLER,
810 Eighteenth Street, N.W.,
Washington, D.C.,
Attorney for Appellant.



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1963

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FRANCIS J. DUGAN, *Appellant*,

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**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

APPELLANT'S PETITION FOR REHEARING

Comes now appellant in the above-entitled cause, by counsel, and moves the Court for a rehearing upon the following grounds:

The errors committed by the Court below adversely affected appellant's substantial rights and were not merely minor errors as indicated by this Court in its opinion. Therefore appellant asks this Court to reconsider its decision, grant a rehearing and reverse the action of the Court below. There were genuine issues of fact here (JA 145-147).

A denial of procedural due process resulted from the combined actions of the Civil Service Commission in re-

fusing to act on appellant's appeal unless the Navy Department issued a standard personnel action form, and the Navy Department in refusing to issue such form unless ordered to do so by the Civil Service Commission. These arbitrary positions which the two departments adopted resulted in the denial of plaintiff's right to have his appeal considered under the applicable regulations. Procedural error resulted in that appellant's rights were nullified by the foregoing combined action of the Civil Service Commission and the Navy Department. This error adversely affected appellant and deprived him of his substantial right of appeal.

The primary issue before the Court below was whether appellant was reduced in rank. That is the outstanding factual issue in this case which was not, but should be resolved. This is a material fact and precluded the Court from properly granting appellees' Motion for Summary Judgment.

Another genuine issue of fact here which should have precluded the entry of Summary Judgment in favor of appellees, is whether the appellant was denied procedural due process when evidence shows this reduction in rank violated Section 14 of the Veterans' Preference Act in the following respects:

- (a) No reasons were given in writing for this action by defendant No. 1.
- (b) Plaintiff was not given 30 days' advance notice in writing by defendant No. 1 for this proposed action.
- (c) Plaintiff did not receive from defendant No. 1 a statement of any and all reasons, specifically and in detail, for reducing him in rank.

In *Stringer v. United States*, 90 F. Supp. 375, at page 379, referring to Section 14 of the Veterans' Preference Act, the United States Court of Claims said: "The require-

ments of Section 14 are specific and mandatory. . . . Strict compliance is required. *Lamb v. United States*, Ct. Cl., 90 F. Supp. 369; *Gadsden v. United States*, 78 F. Supp. 126, 111 Ct. Cl. 487; *Wittner v. United States*, 76 F. Supp. 110, 110 Ct. Cl. 231; *Elchibegoff v. United States*, 106 Ct. Cl. 541."

The Supreme Court has determined that departmental regulations establishing rights for employees must be complied with. *Service vs. Dulles* 354 US 363, 372; *Watson vs. U.S.* 355 US 23.

The Court below did not recognize that regulations validly prescribed by a government administrator are binding upon him as well as on the citizen. This principle holds even when the administrative action under review is discretionary in nature. The action taken against appellant being contrary to the regulations of the Navy Department was unlawful under the above Supreme Court decisions.

The facts set forth in plaintiff's affidavit (JA 119-135) submitted in opposition to defendant's Motion for Summary Judgment have not been controverted. They must be admitted for the purpose of the Motion for Summary Judgment. Therefore appellees were not entitled to have their Motion for Summary Judgment granted by the Court.

The Court below should have granted Motion for Summary Judgment made on behalf of plaintiff which was supported by his affidavit of August 27, 1963 (JA 140-144).

Two Masters were both eligible and qualified to fill the Group Master position (JA 134-135), appellant, a veteran with superior retention rights, and F. J. Simon, a non-veteran with lesser retention rights.

As the appellant is a Veteran Preference employee, and has greater retention rights than F. J. Simon, the application of the Naval Civilian Personnel Instructions (N.C. P.I.), as shown in JA 17-29 required the reassignment of

appellant to the Group Master position. The application of these regulations is mandatory for *ALL* reassignment action (JA 17) (JA 28-29).

Conclusion

Wherefore, it is respectfully submitted that the above petition for rehearing be granted and the judgment of the District Court reversed.

/s/ WARREN E. MILLER,
810—18th Street, N.W.,
Washington, D.C.,
Attorney for Appellant.

Certificate

I certify that the foregoing Petition is presented in good faith and not for delay.

/s/ WARREN E. MILLER,
Attorney for Appellant.

(3935-4)

